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7

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1996

STATE OF ALASKA,

v.

*Petitioner,*

NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, *et al.*,  
*Respondents.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

**BRIEF OF AMICUS CURIAE  
SHEE ATIKA, INCORPORATED,  
IN SUPPORT OF RESPONDENTS  
NATIVE VILLAGE OF  
VENETIE TRIBAL GOVERNMENT, ET AL.**

BRUCE N. EDWARDS \*  
MICHAEL R. SORENSEN  
SORENSEN & EDWARDS, P.S.  
1201 Third Avenue, Suite 2900  
Seattle, WA 98101  
(206) 224-8225

*Attorneys for  
Shee Atika, Incorporated*

*\* Counsel of Record*

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IN SUPPORT OF RESPONDENTS  
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---

INTEREST OF *AMICUS CURIAE*

Shee Atika, Incorporated (herein "Shee Atika")<sup>1</sup> is the corporation organized under the Alaska Native Claims Settlement Act<sup>2</sup> for Alaska Natives whose historic roots

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<sup>1</sup> No person or entity other than Shee Atika has made a monetary contribution to the costs of preparing this brief. This brief is filed with the consent of the parties and their letters of consent have been lodged with the Clerk of this Court.

<sup>2</sup> Pub. L. No. 92-203, 85 Stat. 688 (1971), codified at 43 U.S.C. §§ 1601 *et seq.* (herein "ANCSA"). This brief generally cites both to the indicated ANCSA sections and the corresponding provisions



are in Sitka, Alaska. Shee Atika presently has approximately 2,345 shareholders, principally of Tlingit, Tsimshian and Haida Indian heritage. Shee Atika received approximately 26,000 acres of surface estate timberland in three locations in Southeast Alaska, as well as a modest amount of cash, under ANCSA. According to published reports, Shee Atika's book net worth of approximately \$75 million makes it one of the larger ANCSA corporations.<sup>3</sup>

Shee Atika is filing this amicus brief because Shee Atika, as an ANCSA corporation which still owns the lands it received under ANCSA, has a pronounced interest in the outcome of this case. Shee Atika's legal position is that the Native Village of Venetie Tribal Government<sup>4</sup> and other various Alaska Native tribal entities<sup>5</sup> have "sovereignty," *i.e.*, governmental jurisdiction over those persons and entities which have *voluntarily* submitted to the tribe's

of the United States Code. Although Shee Atika believes that the original version of ANSA is generally the controlling law in this case, this brief cites to current versions of the statute where appropriate.

<sup>3</sup> This includes approximately \$45 million held in a settlement trust which Shee Atika established for its shareholders in 1993 pursuant to ANCSA § 39, 43 U.S.C. § 1629e.

<sup>4</sup> This brief refers to the Native Village Of Venetie Tribal Government simply as "Venetie".

<sup>5</sup> This brief uses the terms "tribe", "tribal entities", and "tribal organizations" interchangeably. All denote a group of Alaska Natives which have organized to exercise certain governmental powers, whether under federal authority (*i.e.*, the Indian Reorganization Act as made applicable to Alaska, *infra* note 10) or in a "traditional" mode (*i.e.*, without federal approval). These are intended to contrast with the terms "ANCSA corporation" and "Native corporation", which indicate only those corporations which organized under Alaska state law to receive the ANCSA settlement. Although the question in this case is technically whether Venetie is a "dependent Indian community" under 18 U.S.C. § 1151(b), for simplicity, this brief phrases the question in terms of whether or not such lands and other ANCSA lands are "Indian Country".

jurisdiction. Such jurisdiction includes ANCSA land only in the very limited circumstances of the present case where (1) the corporate shareholders of Venetie's ANCSA predecessors made an election under § 19(b)<sup>6</sup> of ANCSA to receive the lands of their former reserve and (2) those former reserve lands were conveyed to the tribal entity. Shee Atika believes that ANCSA land is not Indian Country unless both of the foregoing circumstances are present.

This case turns on a correct interpretation of ANCSA and understanding of the general relationship between the local ANCSA corporation and the local tribal organization. Shee Atika is organized under ANCSA, by and for Alaska Natives, and thus, is intimately familiar with how the rules of both ANCSA and Alaska state law interact *vis a vis* ANCSA corporations. A substantial number of Shee Atika's shareholders are *not* members of the local tribal organization for Sitka, the Sitka Tribe of Alaska, and Shee Atika believes that tribal jurisdiction over Shee Atika's ANCSA lands will adversely impact Shee Atika's interests and those of its shareholders. Shee Atika owes a fiduciary duty to protect the interests of *all* its shareholders, including those who are not members of the local tribe. By contrast, Shee Atika has *no* fiduciary duty to persons who are members of the local tribe but who are not Shee Atika shareholders.

## SUMMARY OF ARGUMENT

### I.

Although reaching the correct result that the Venetie lands are Indian Country, the Ninth Circuit majority opinion<sup>7</sup> incorrectly assumed that the local ANCSA cor-

<sup>6</sup> ANCSA § 19(b) is discussed *infra* at note 42 and accompanying text.

<sup>7</sup> *State of Alaska, et al. v. Native Village of Venetie Tribal Government, et al.*, 101 F.3d 1286 (9th Cir. 1996).



poration is the same as the local tribal organization. In fact, they are different organizations, composed of different members and subject to different rules. Indian Country status is appropriate for Venetie's lands only because of the unique circumstances of an ANCSA § 19(b) election to acquire former reserve lands, followed by a conveyance of those former reserve lands into tribal ownership.

## II.

Although reaching the correct result that the Venetie lands are Indian Country, the Ninth Circuit is incorrect to the extent that it suggests that all ANCSA corporate lands have been set aside for the local tribe or the tribal members. In no sense does the ANCSA corporation hold its ANCSA assets "for" the local tribe or the tribe's members. Instead, the ANCSA corporation has a fiduciary duty under Alaska state law only to its own shareholders, whether or not those shareholders are members of the local tribe. Despite repeated amendments to ANCSA in the past quarter century, Congress has never altered the rule that Alaska state law controls ANCSA corporations. In other legislation providing benefits to Indian lands, Congress itself has treated ANCSA corporate lands as not meeting the 18 U.S.C. § 1151 definition of Indian Country.

## III.

Judge Fernandez's concurrence below was correct: there will be substantial adverse impacts on Shee Atika and other ANCSA corporations unintended by Congress if this Court does not hold that ANCSA lands can become Indian Country only after an ANCSA § 19(b) election followed by a conveyance to the tribal entity.

## ARGUMENT

### I. ALTHOUGH REACHING THE CORRECT RESULT THAT THE VENETIE LANDS ARE INDIAN COUNTRY, THE NINTH CIRCUIT MAJORITY OPINION INCORRECTLY ASSUMED THAT THE LOCAL ANCSA CORPORATION IS THE SAME AS THE LOCAL TRIBAL ORGANIZATION.

In Shee Atika's case, and in most other ANCSA corporate situations, it is the ANCSA corporation itself and not the local tribal entity which holds title to the land conveyed under ANCSA. ANCSA corporations (including Shee Atika) do not have or exercise governmental powers and are best described as private landowners. The ANCSA corporation is not the tribe.

In contrast, this case involves a highly unique factual pattern in which (1) there was a recognized tribal entity which had inhabited a reservation prior to ANCSA, (2) two ANCSA corporations were formed within the former reserve lands which had similar memberships in the aggregate when compared with the tribal entity, (3) the ANCSA corporations each elected under ANCSA § 19(b) to receive a portion of the former reserve lands, and (4) subsequently, both ANCSA corporations conveyed the former reserve land to the tribal entity and then dissolved. In short, the reservation land came full circle and was once again in the possession of the tribe. These facts, Shee Atika believes, justify a conclusion that the former ANCSA lands now owned by Venetie are "Indian Country" because of the uniqueness of the ANCSA § 19(b) election and the conveyance of the former reserve lands to Venetie. It is the fact that Venetie has acquired its former reserve (albeit through ANCSA) which satisfies the set aside requirement, and hence, why Indian Country status exists as to Venetie's lands.

Unfortunately, the Ninth Circuit majority opinion does not articulate this rationale to conclude that Venetie's lands are Indian Country. Instead, the Ninth Circuit's

majority opinion goes beyond the facts of Venetie and makes unwarranted generalizations about the relationships between tribal organizations and local ANCSA corporations. It is critical that this Court understand the very real difference in most Alaska locales between the local tribal organization and the local of ANCSA corporation, where there has been no ANCSA § 19(b) election followed by a conveyance of land ownership to the tribe. In illustration, this brief contrasts Shee Atika's membership with that of the present local tribal entity for Sitka, the Sitka Tribe of Alaska.<sup>8</sup> Shee Atika has never made a § 19(b) election, and indeed, could not, because there was never a reserve for the Natives of Sitka. Moreover, Shee Atika has never conveyed ownership of its ANCSA lands to the Sitka Tribe of Alaska or any other tribal entity. In other words, in Shee Atika's case, it is the ANCSA corporation and *not* the tribe which owns the ANCSA lands.

#### A. Summary of Differences Between Enrollment and Membership in ANCSA Corporations and Local Tribal Organizations.

Since 1936 Alaska Native groups have been permitted by § 16 of the Indian Reorganization Act ("IRA")<sup>9</sup> to organize to receive federal benefits. Although the IRA was not applicable at its 1934 enactment to what was then the Territory of Alaska, this was altered two years

<sup>8</sup> Shee Atika is a type of ANCSA corporation known as an "urban corporation" because it was originally organized for an "urban community of Natives." See ANCSA § 3(o), 43 U.S.C. § 1602(o). However, the differences which the text discusses between Shee Atika and the Sitka Tribe of Alaska do not arise from Shee Atika's status as an urban corporation but rather from the shareholder enrollment and stock transfer rules applicable to *all* ANCSA corporations as contrasted with the membership rules applicable to tribal entities.

<sup>9</sup> Act of June 18, 1934, ch. 576, 48 Stat. 984 (1934), codified at 25 U.S.C. § 461 *et seq.*

later by the Alaska Native Reorganization Act of 1936.<sup>10</sup> The relevant language of both § 16 of the IRA<sup>11</sup> and the Alaska Native Reorganization Act of 1936 required residency within a defined locale as a precondition to organization under federal law. In relevant part, § 1 of the Alaska Native Reorganization Act permits:

\* \* \* groups of Indians in Alaska \* \* \*, but having a common bond of occupation, association, or residence within a well-defined neighborhood, community, or rural district [to] organize \* \* \* to receive charters of incorporation and federal [benefits] \* \* \*.

The Sitka Community Association<sup>12</sup> was formed in 1938 under these provisions for the Alaska Natives residing in the Sitka area. The Constitution for SCA<sup>13</sup> was formally ratified by Sitka-area Natives on October 11, 1938 after approval by the Bureau of Indian Affairs ("BIA") and was not thereafter modified until 1992. This Constitution required Sitka-area residency for membership<sup>14</sup> and provided a highly specific definition of that

<sup>10</sup> See § 1 of the Alaska Native Reorganization Act, Pub. L. No. 588, ch. 254, 49 Stat. 1250 (1936), presently codified at 25 U.S.C. § 473a.

<sup>11</sup> Although IRA § 16 was substantially rewritten as part of the Indian Reorganization Act Amendments of 1988, Pub. L. No. 100-581, 102 Stat. 2938 (1988), these 1988 Amendments to IRA § 16 did not affect the requirement of the Alaska Native Reorganization Act quoted in the text that a group of Indians within Alaska must have a common bond of residence "within a well-defined neighborhood" to be eligible to receive a federal charter.

<sup>12</sup> This brief refers to "SCA" to indicate the IRA § 16 organization from its date of formation in 1938 until a new Constitution was approved in January, 1992. Among the changes accomplished by the 1992 Constitution was to rename the organization "Sitka Tribe of Alaska". We use "SCA/STA" to indicate the Sitka-area tribal organization after its 1992 renaming.

<sup>13</sup> A copy of the original SCA Constitution is attached as Appendix A.

<sup>14</sup> See SCA Constitution, Article II, § 1 (original members); SCA Constitution, Article II, § 3 (new members).



residence.<sup>16</sup> Children of tribal members would automatically become members of SCA, provided they continued to reside (ignoring temporary absences) in the Sitka area.<sup>16</sup> Members of other Indian groups could become members of SCA by moving to Sitka and maintaining a permanent residence, regardless of any prior tribal affiliations.<sup>17</sup> Finally, since one had to be an "Indian" to be a member of SCA, it follows that those who were not "Indian" could not be members of SCA.<sup>18</sup>

In 1992, SCA was reconstituted with the approval of the Department of Interior as the Sitka Tribe of Alaska.<sup>19</sup> At the time the revised Constitution and Bylaws for SCA/STA were approved in 1992, the Department of the Interior formally expressed concerns about a number of provisions in the revised Constitution.<sup>20</sup> One of these provisions had sought to include Shee Atika's fee-owned ANCSA surface estate and the subjacent ANCSA subsurface estate owned in fee by Sealaska Corporation<sup>21</sup> as tribal lands of SCA/STA.<sup>22</sup> Another provision had indi-

<sup>16</sup> SCA Constitution, Article II, § 4.

<sup>16</sup> SCA Constitution, Article II, § 3.

<sup>17</sup> *Id.*

<sup>18</sup> SCA Constitution, Article II, § 1.

<sup>19</sup> A copy of the Constitution and Bylaws for the "Sitka Tribe of Alaska" is appended hereto as Appendix B.

<sup>20</sup> A copy of the approval letter (the "Appendix C Approval Letter") from the Department of Interior relative to the revised SCA/STA Constitution is appended hereto as Appendix C.

<sup>21</sup> As the regional corporation for Southeastern Alaska, Sealaska had 15,790 original enrollees. Only about 12% of Sealaska's original enrollees were enrollees to Shee Atika, *i.e.*, Natives with historic ties to Sitka.

<sup>22</sup> See SCA/STA Constitution, Article II. The Department of Interior did *not* approve SCA/STA tribal jurisdiction over Shee Atika's or Sealaska's ANCSA lands, reading the phrase "if any" within Article II to simply limit the jurisdictional reach of SCA/STA to whatever existing law provided. See Appendix C Approval Letter, at page 3.

cated that Sitka-area residency was no longer required for SCA/STA membership.<sup>23</sup>

The requirements for initial enrollment to become an ANCSA shareholder were quite different from enrollment to a tribal organization. ANCSA enrollment was to be based on a census prepared by the Secretary of Interior, stating a roll of all Alaska Natives living on December 18, 1971.<sup>24</sup> In general, Natives were to be enrolled to the region and the village in which they resided on the date of the 1970 census.<sup>25</sup> Natives not "permanently resident" within Alaska on this date were to be enrolled to the regional corporation within Alaska for the region where they met various prioritized criteria such as historic residency,<sup>26</sup> or they could elect to be enrolled to a "Thirteenth Regional Corporation."<sup>27</sup> In any event, the Secretary of Interior also had power to override the foregoing enrollment rules where necessary to avoid hardship or to avoid enrolling persons in a region different from their family members.<sup>28</sup>

Although ANCSA originally required the enrollment process to be completed within two years, difficulties were encountered and Congress eventually extended the deadline until January 2, 1977. Once the Alaska Native roll was complete, no one could be added to such roll except by Act of Congress.<sup>29</sup> Similarly, once the Alaska Native

<sup>23</sup> See SCA/STA Constitution, Article III, § 1. In the Appendix C Approval Letter, at page 3, the Department concluded that Sitka-area residence remained a requirement for tribal membership notwithstanding the apparent ambiguity of the SCA/STA Constitution upon this point.

<sup>24</sup> ANCSA § 5(a), 43 U.S.C. § 1604(a).

<sup>25</sup> ANCSA § 5(b), 43 U.S.C. § 1604(b).

<sup>26</sup> ANCSA § 5(b)(1)-(4), 43 U.S.C. § 1604(b)(1)-(4).

<sup>27</sup> ANCSA § 5(c), 43 U.S.C. § 1604(c).

<sup>28</sup> ANCSA § 5(b), 43 U.S.C. § 1604(b).

<sup>29</sup> See, *e.g.*, § 101 of the Admiralty Island National Monument Land Management Act of 1990, Pub. L. No. 101-378, 104 Stat. 468



roll was finalized, a physical relocation would not change a person's shareholder status with a particular village or regional corporation. Again, only an Act of Congress could do that.<sup>80</sup> Thus, children born after December 18, 1971 are not automatically shareholders of either the respective regional or local ANCSA corporation in which their parents own stock.

Moreover, since ANCSA's enactment, ANCSA stock has been freely transferable upon death and Congress has consistently recognized since the passage of ANCSA that at least some persons who were not of Native descent would eventually own stock in ANCSA corporations.<sup>81</sup>

Perhaps not surprisingly, the membership of SCA/STA and the stockholders of Shee Atika has become even more different since 1971. By January, 1992, when SCA/STA's new Constitution was approved by the Department of the Interior, there were apparently 1,374 SCA/STA members who were resident in Sitka.<sup>82</sup> Shee Atika, on the other

(1990), which added twenty named persons to Cook Inlet Region, Inc. (the ANCSA regional corporation for the Anchorage vicinity).

<sup>80</sup> See, e.g., § 12 of Pub. L. No. 102-497, 106 Stat. 3255, 3260 (1992), which permitted two identified persons previously enrolled to Sealaska Corporation (the ANCSA regional corporation for Southeast Alaska) as "at large shareholders", i.e., without accompanying village corporation enrollment, to be reenrolled to the village corporation for the Craig, Alaska area.

<sup>81</sup> For example, ANCSA § 7(h)(2), 43 U.S.C. § 1606(h)(2), as originally enacted provided that until December 18, 1991 ANCSA stock would carry voting rights only if the new stockholder "also is a Native".

<sup>82</sup> Apparently, the roll submitted by SCA/STA as a part of the 1992 Constitutional amendment process included 2,669 persons, only 1,374 of whom were actually stated to be Indian residents of Sitka. As the Appendix C Approval Letter makes clear, all persons on the SCA/STA roll must meet the requirements of the original SCA Constitution by being an Indian resident of Sitka. ("Approval of this amended Constitution with its reference to the October 1991 base roll must not be construed as approving the reformation of

hand, had 1,851 persons originally enrolled to it under ANCSA; by January, 1992, the number of Shee Atika's shareholders had grown to about 1,950,<sup>83</sup> only about half of whom resided in Sitka.

**B. Congress Could Have Required Alaska Natives to Incorporate Under Federal Indian Law to Receive the ANCSA Settlement, Thereby Making the Settlement Entities the Same as the Tribe, But Chose Not to Do So.**

At the time ANCSA was enacted in 1971, Federal Indian law had, for 35 years,<sup>84</sup> permitted Alaska Natives to incorporate under either IRA § 16 or § 17<sup>85</sup> to receive federal benefits. Such incorporation under federal law would necessarily carry with it federal rules and supervision.<sup>86</sup> This statutory scheme was already in place at the time ANCSA was enacted, and numerous Alaska Native villages<sup>87</sup> had organized under the IRA. *Had*

an organization on a basis other than residence in the neighborhood of Sitka").

<sup>83</sup> Shee Atika presently has about 2,345 shareholders, of whom only 856 are resident in Sitka. Of these 2,345 shareholders, approximately 2,315 are of Native descent and are entitled to exercise voting rights under ANCSA; the balance are not of Native descent and are not eligible to vote.

<sup>84</sup> See note 10 above and accompanying text.

<sup>85</sup> IRA § 16, 25 U.S.C. § 476, permits Indian groups to incorporate under a federally approved Constitution for internal governance. IRA § 17, 25 U.S.C. § 477, permits Indian groups to organize corporations, again under federal law, to conduct for profit business activity. Generally speaking, the § 16 organizations possess sovereignty, and with it, immunity from suit, while the § 17 corporations do not.

<sup>86</sup> See, e.g., 25 C.F.R. Part 81 ("Tribal Reorganization under Federal Statute"); 25 C.F.R. Part 82 ("Petitioning Procedures For Tribes Reorganized Under Federal Statute and Other Organized Tribes").

<sup>87</sup> See D. Case, *Alaska Natives and American Law* 444 (Univ. Alaska Press 1984), which indicates that 69 Alaska Native Villages had so organized under the IRA.

*Congress wished to continue formal federal supervision over the ANCSA settlement, it could easily have done so by simply requiring Alaska Native groups to incorporate under the existing IRA structure to receive ANCSA benefits.*<sup>38</sup> This would have made the entities which received the ANCSA settlement the same as the tribe.

Congress did not require incorporation under the IRA to receive the ANCSA settlement. Instead Congress required Alaska Natives to organize corporations under Alaska state law and revoked or modified various provisions of federal Indian law<sup>39</sup> to make those provisions inapplicable to the Alaska Natives. The result is that the local tribal membership is simply different from the persons who own the stock of the local ANCSA corporation.

**C. The Local ANCSA Corporation Is Not the Same as the Local Tribal Organization, Because in at Least Some Cases There Are Multiple Local Tribal Organizations.**

Yet another reason the local ANCSA corporation cannot be equated with the local tribal organization is that the lands of some local ANCSA corporations are in the vicinity of multiple local tribal organizations. Such an ANCSA corporation would have to have multiple per-

<sup>38</sup> The language of IRA § 17 seems particularly well suited to the task of receiving, operating and disposing of ANCSA settlement lands, since a corporate charter under § 17 grants full power of disposition over the lands and assets which the entity may acquire "and such further powers as may be incidental to the conduct of corporate business \* \* \*".

<sup>39</sup> ANCSA § 18, 43 U.S.C. § 1617 (revoking applicability to Alaska Natives of the Indian General Allotment Act, ch. 119, 24 Stat. 389 (1887)); ANCSA § 19, 43 U.S.C. § 1618 (revoking all reserves set aside by legislation or Executive Order for Alaska Natives except Annette Island Reserve). See ANCSA § 2(b), 43 U.S.C. § 1601(b) (ANCSA settlement to be accomplished "without creating a reservation system or lengthy wardship or trusteeship").

sonalities to accommodate all the local tribal organizations. Shee Atika's own ANCSA land ownership demonstrates this.

Shee Atika has significant ANCSA land holdings in the Sitka area, but also owns ANCSA lands 75 miles away from Sitka at Cube Cove, Alaska. The lands at Cube Cove lie much closer in a geographic sense to the communities of Angoon (35 miles away), Hoonah (30 miles away) and Douglas (35 miles away) than to Sitka.<sup>40</sup> Each of these communities has their own local tribal organizations and could arguably assert their own historic claims to sovereignty over some of Shee Atika's ANCSA lands. Moreover, some (but not all) of Shee Atika's shareholders also are members of the Tlingit and Haida Indian Tribes of Alaska, a regional tribal organization headquartered in Juneau, Alaska, with membership throughout Southeast Alaska wherever persons recognized as Tlingit or Haida Indians reside.<sup>41</sup> Because it is a logical impossibility for Shee Atika to be the same as

<sup>40</sup> The proximity of the Cube Cove lands to Angoon led directly to litigation between Angoon and Shee Atika relative to the right of Shee Atika to log at Cube Cove. *City of Angoon, et al., v. Hodel, et al.*, 803 F.2d 1016, 1018 (9th Cir. 1986), *cert. denied*, 484 U.S. 870 (1987); *City of Angoon, et al., v. Marsh, et al.*, 749 F.2d 1413, 1418 (9th Cir. 1984). Shee Atika prevailed in these cases.

<sup>41</sup> The Tlingit and Haida Indian Tribes of Alaska is governed by a Central Council, which was the entity which received payment of the \$7,546,053.80 judgment determined by the former Court of Claims in *Tlingit and Haida Indians of Alaska v. United States*, 389 F.2d 778 (1968). See Pub. L. No. 89-130, 79 Stat. 543 (1965), amending Pub. L. No. 152, ch. 275, 49 Stat. 388 (1935). The Central Council is an Indian entity recognized by the United States government. See, e.g., Indian Tribes Recognized as Eligible to Receive Services from the United States, 60 Fed. Reg. 9250 (February 16, 1995). Thus, for purposes of this brief, the Central Council is one more tribal entity which could assert jurisdiction over ANCSA lands in Southeast Alaska, including those of Shee Atika.



each of these multiple tribal organizations, the Ninth Circuit's assumption that a single ANCSA corporation can be equated with a single local tribal organization is incorrect.

**D. Congress Has Expressly Recognized in Legislative History That the Local ANCSA Corporations and the Local Tribal Organizations Have Different Memberships and Are Not the Same.**

Section 19(a) of ANCSA revoked the then existing reservations in Alaska (other than the Annette Island Reserve). Section 19(b) of ANCSA permitted the ANCSA corporations which were formed for these respective Natives<sup>42</sup> to elect to receive fee title to the lands which had formerly been set aside for their benefit. Klukwan, Inc., the ANCSA corporation for the Village of Klukwan in Southeast Alaska, made a § 19(b) election in 1973, and then discovered that such lands would be of little value due to the fact that the IRA organization for the Village of Klukwan (known as Chilkat, Inc.) had already leased certain of the minerals within the former reserve lands to an unrelated party. Faced with a situation in which the ANCSA corporation and its shareholders would receive no practical value from its ANCSA conveyance, Congress permitted Klukwan, Inc. to rescind its ill advised § 19(b) election in § 9 of the 1976 Amendments to ANCSA.<sup>43</sup> The legislative history of § 9 is telling as to the relationship Congress perceived between this local ANCSA corporation and the local tribal organization:

A reservation was set aside by the Act of September 2, 1957 for the Chilkat Indian Village which was organized pursuant to the provisions of the In-

<sup>42</sup> There were 25 ANCSA corporations which were eligible to make the § 19(b) election; only seven did so. R. Arnold, *Alaska Native Land Claims* 199 (Alaska Native Foundation 1978).

<sup>43</sup> § 9, Pub. L. No. 94-204, 89 Stat. 1147 (1976).

dian Reorganization Act, as amended. The land was near the Village of Klukwan and was an enlargement of an Executive Order reservation. The same Act permitted the IRA corporation to lease minerals underlying the lands for its benefit. This was done.

The Natives of the Klukwan village area voted [under § 19(b)] to retain the former reserve. However, § 19 made such lands, in the hands of the ANCSA corporations, subject to valid existing rights. One such right was the existing iron ore mineral lease by the IRA corporation which remained separate from the ANCSA corporation.

*While all of the members of the IRA corporation are also members of the ANCSA corporation, the reverse is not true. Since the IRA corporation has a vested right to the subsurface of lands and very likely to the surface also, the net effect is that the ANCSA corporation and its shareholders have no real assets whatsoever. [Emphasis added].*<sup>44</sup>

The legislative history of § 9 of the 1976 amendments explained further requirements which were imposed to protect both Klukwan, Inc.'s and Chilkat, Inc.'s respective rights:

The foregoing provision will not become effective until Klukwan, Inc. quitclaims to Chilkat, Inc. [the IRA corporation] any interest it may have in the former reserve lands which are quieted in Chilkat, Inc. in fee simple.

The Committee adopted an amendment to § 9 which provides that the United States and Klukwan, Inc. must also quitclaim any interest they may have in certain funds earned on the lease of the mineral resources of the former reserve since enactment of the Settlement Act to Chilkat, Inc.<sup>45</sup>

<sup>44</sup> H. Rep. Rept. No. 94-729, 94th Cong., 1st Sess. 29 (1975), reprinted in 1975-2 U.S. Code Cong. & Admin. News 2376, 2395-2396.

<sup>45</sup> *Id.*



Had there been an identity of interest between ANCSA corporations and the local tribal organizations, none of the foregoing would have been necessary. That is, it would not have made a difference whether Klukwan, Inc. (the ANCSA corporation) or Chilkat, Inc. (the IRA organization) was the formal owner of the former reserve and the related mineral lease. Yet as the foregoing legislative history expressly recognized, there was not (and is not) an exact identity between the ANCSA corporation and the local tribal organization, since each has different members.

**II. ALTHOUGH REACHING THE CORRECT RESULT THAT THE VENETIE LANDS ARE INDIAN COUNTRY, THE NINTH CIRCUIT MAJORITY OPINION INCORRECTLY CONCLUDED THAT THE ANCSA LAND CONVEYANCES ACCOMPLISHED A *PER SE* SET ASIDE OF ALL ANCSA LANDS.**

**A. The Nativeness of an ANCSA Corporation Does Not Amount to a Set Aside of Its Assets "for" the Local Tribe Since Such Assets Are Held Under State Law Only for the Corporation's Shareholders.**

Shee Atika is concerned that the Ninth Circuit's majority opinion will be interpreted as a *de facto* rule that there is always a federal set aside with regard to ANCSA lands, whether or not those lands are still owned by the ANCSA corporation. Specifically, the majority opinion stated:

We believe that the village corporations established under ANCSA, while business entities, maintain a distinct Native identity. Accordingly, we conclude that the land set aside for such corporations qualifies as land set aside for Alaska Natives, as such.<sup>46</sup>

<sup>46</sup> 101 F.3d at 1300.

And the Ninth Circuit majority opinion concluded:

Here, Congress specifically has conferred the land at issue on the Natives by statute [ANCSA]. We hold that this satisfies the set aside requirement.<sup>47</sup>

ANCSA corporations are indeed fundamentally Native in character. Natives do indeed own the vast majority of stock in Shee Atika and its sister ANCSA corporations. Shee Atika submits, however, that the "Nativeness" of an ANCSA corporation does not lead to the conclusion that there is a "set aside" of the ANCSA assets *for the tribe or for the tribal members*. Instead, under the Alaska state corporate law which Congress carefully and repeatedly<sup>48</sup> made applicable to ANCSA corporations, the assets of each ANCSA corporation are owned by that ANCSA corporation and thus indirectly owned (through stock ownership) by its shareholders. If there has been a set aside which ANCSA accomplishes, it is a set aside for

<sup>47</sup> 101 F.3d at 1304.

<sup>48</sup> See ANCSA § 7(d), 43 U.S.C. § 1606(d) (regional corporations are to incorporate "under the laws of Alaska"); ANCSA § 7(h)(2), 43 U.S.C. § 1606(h)(2) (ANCSA shareholders are to have "all rights of a stockholder in a business corporation organized under the laws of the State of Alaska"); ANCSA § 8(a), 43 U.S.C. § 1607(a) (village corporations are to "organize \* \* \* under the laws of [Alaska]" before they can receive benefits under ANCSA); ANCSA § 14(h)(2), 43 U.S.C. § 1613(h)(2) (an Alaska Native group may receive ANCSA benefits "if it incorporates under the laws of Alaska"); ANCSA § 14(h)(3), 43 U.S.C. § 1613(h)(3) (Natives of Sitka, Kodiak, Kenai and Juneau may receive ANCSA benefits "if they incorporate under the laws of Alaska"). See also ANCSA § 3(g), (j), (n), and (o), 43 U.S.C. § 1602(g), (j), (n), and (o) (defining regional corporations, village corporations, group corporations and urban corporations, respectively, as corporations "organized under the laws of the State of Alaska"); ANCSA § 3(t), 43 U.S.C. § 1602(t) (defining settlement trust as "a trust established and registered by a ANCSA corporation under the laws of the State of Alaska and operated for the sole benefit of the holders of the corporation's Settlement Common Stock in accordance with § 39 [43 U.S.C. § 1629e] and the laws of the State of Alaska.")

ANCSA shareholders, and not a set aside for the tribe or for tribal members as such.<sup>49</sup>

The Ninth Circuit majority opinion thus misreads the import of ANCSA § 3(j), which defines a "village corporation" as holding the ANCSA settlement "for and on behalf of a Native village." The Ninth Circuit majority opinion construes this language as essentially creating a quasi-trust relationship with the Native corporation as fiduciary for the historic Native village. However, incorporation under state law (as ANCSA plainly requires) places the Native corporation in a trust relationship *only with its own shareholders*. The Native corporation cannot simultaneously be a fiduciary "for and on behalf of a Native village" and for and on behalf of its own shareholders.

When ANCSA is viewed as a consistent whole, and in particular its plain requirement of organization under Alaska state corporate law, it becomes clear that the better reading of the "for and on behalf of" language of ANCSA § 3(j) is that the Native village was merely the geographic unit for determining eligibility for initial ANCSA enrollment. See ANCSA § 11(b), 43 U.S.C. § 1610(b) (listing Villages other than those in Southeast Alaska eligible for ANCSA incorporation); ANCSA § 16(a), 43 U.S.C. § 1615(a) (listing Villages in Southeast Alaska eligible for ANCSA incorporation). Once the ANCSA corporations were formed and the settlement accomplished, ownership of the ANCSA corporate stock became the prerequisite for receiving the benefit of the ANCSA settle-

<sup>49</sup> There is another reason the Ninth Circuit majority's treatment of the ANCSA land conveyances as a set aside under Indian law is incorrect. The notion of a "set aside" for federal Indian law purposes is best analogized to a "dedication" of land with an element of permanence to that dedication. ANCSA accomplishes no *permanent* dedication of land for Native purposes because ANCSA corporations are as free as any other private owners to dispose of their lands.

ment, not membership in a tribe or residence within the Native village.

**B. Despite Repeated Exertions of State Authority Over ANSCA Corporations, Congress Has Never Evidenced an Intent That Alaska State Law Does Not Generally Control ANCSA Corporations.**

At the time ANCSA was being considered, Congress expressly recognized that it was making ANCSA corporations subject, on a day to day basis, to Alaska state law and that the State of Alaska might be unduly hostile to Native interests being incorporated under state law. Early drafts of ANCSA contained express prophylactic provisions to restrict the ability of the State of Alaska to legislate regarding ANCSA corporations. These provisions were largely dropped from the final ANCSA legislation in the Conference Committee. As the Conference Report explained:

The Senate Amendment contained specific language in a number of sections which dealt with conflict of laws questions between the [ANCSA] Act and State Corporation law. This potential problem is dealt with in subsection 7(p) of the conference report which provides that the provisions of sections 7 and 8 prevail in the event of any conflict.

The conference committee considered, but decided not to adopt, language from the Senate amendment to guard against any special State legislation which might impair the activities and economic viability of the Corporations established by the conference report. It was the conference committee's conclusion that the State would deal fairly in all respects with ANCSA corporations.<sup>50</sup>

<sup>50</sup> Conf. Rept. 92-746, 92nd Cong., 1st Sess. 42, reprinted in 1971-2 U.S. Code Cong. & Admin. News 2247, 2255.



Within 5 months of ANCSA's passage the Alaska Legislature adopted legislation to implement ANCSA.<sup>51</sup>

These provisions included A.S. § 22.10.020 (granting exclusive jurisdiction to the Alaska state courts to decide questions of ANCSA stock ownership incident to a divorce or child custody proceeding),<sup>52</sup> A.S. § 13.16.705 (authorizing a simplified affidavit procedure enforceable through state court to accomplish ANCSA stock transfers on death),<sup>53</sup> and A.S. § 45.60.016 (now A.S. § 13.46.085, designating persons to automatically serve as custodians of minor ANCSA stockholders and granting jurisdiction to Alaska state courts to vary that priority).<sup>54</sup>

Congress did not pass legislation to overrule the 1972 Alaska state implementing legislation. Indeed, when Congress amended ANCSA in 1976 to expressly exempt

<sup>51</sup> Act of May 18, 1972, Chapter 70, Alaska Session Laws of 1972, a copy of which is attached as Appendix D.

<sup>52</sup> The validity of A.S. § 22.10.020 has been affirmed by the Alaska Supreme Court in *Calista Corporation v. DeYoung*, 562 P.2d 338 (Alaska 1977). By contrast, it is the tribe and not the state which has jurisdiction to decide the domestic relations of its members. See generally *Fisher v. District Court*, 424 U.S. 382 (1976); *United States v. Quiver*, 241 U.S. 602 (1916); *Conroy v. Conroy*, 575 F.2d 175 (8th Cir. 1978); Indian Child Welfare Act ("ICWA"), Pub. L. No. 95-608, 92 Stat. 3069, codified at 25 U.S.C. §§ 1901 *et seq.* Even after a valid tribal decision, the BIA must approve the transfer of restricted trust property. See 25 C.F.R. §§ 152.17-152.25.

<sup>53</sup> With regard to death transfers of restricted Indian lands or trust property, it is fundamentally clear that it is the BIA, and not the state courts, which has the exclusive jurisdiction to decide ownership upon the death of a tribal member. See Pub. L. No. 313, ch. 431, 36 Stat. 855 (1910), codified at 25 U.S.C. § 372 *et seq.* The procedures applicable to such federal determinations are set forth at 43 C.F.R. §§ 4.200 *et seq.* See also *Standing Bear's Estate v. Belcourt, Mont.*, 631 P.2d 285 (Mont. 1981).

<sup>54</sup> ICWA, *supra* note 52, grants exclusive jurisdiction to the tribe to decide such issues as to tribal members and children who may be tribal members.

ANCSA corporations from the reach of *federal* securities law it did so in part on an express recognition that Alaska *state* securities laws would govern.<sup>55</sup> By contrast, voting within tribal organizations is subject to federal oversight by the BIA to assure fair elections.<sup>56</sup>

Many ANCSA corporations received substantial amounts of timber as a part of the ANCSA settlement. ANCSA corporations are free to harvest that timber without federal controls, subject only to Alaska state law.<sup>57</sup> By federal statute, tribal and other restricted Indian timber must be managed by the federal government in a *trustee* capacity.<sup>58</sup>

<sup>55</sup> § 3, Pub. L. No. 94-204, 89 Stat. 1147 (1976). See H. Rep. Rept. No. 94-729, 94th Cong., 1st Sess. 17-21 (1975), reprinted in 1975-2 U.S. Code Cong. & Admin. News 2376, 2383-2387. Thus, shareholder voting at ANCSA corporations has long been subject to state rules which prohibit "materially false and misleading statements in proxy solicitations". *Brown v. Ward*, 593 P.2d 247 (Alaska 1979); A.S. § 45.55.139 (requiring any ANCSA corporation with more than 500 shareholders to file proxy solicitations with Alaska state regulators); A.S. § 45.55.160 (prohibiting any materially false solicitations in filed materials); 3 Alaska Administrative Code (AAC) 08.305 *et seq.* (imposing various requirements for proxy solicitation relative to ANCSA corporations having more than 500 shareholders).

<sup>56</sup> See 25 U.S.C. § 476; 25 C.F.R. Parts 81 and 82, *supra* note 36. To the extent that rules beyond those promulgated by the BIA are necessary for tribal elections, it is the tribal organization itself which sets the election rules as a matter of internal governance.

<sup>57</sup> See Alaska State Forest Practices Act, A.S. §§ 41.17.010 *et seq.* and related regulations at 11 A.A.C. §§ 95.185 *et seq.* Although § 22(k) of ANCSA, 43 U.S.C. § 1621(k), imposed limited restrictions on the initial timber harvest (such as a limitation on timber export), those restrictions have long since lapsed. See generally *City of Angoon, et al. v. Hodel, et al.*, 803 F.2d 1016, 1025-1027 (9th Cir. 1986), *cert. denied*, 484 U.S. 870 (1987).

<sup>58</sup> See, e.g., 25 U.S.C. § 406 (sale of timber on lands held under trust); 25 U.S.C. § 407 (sale of timber on unallotted lands); 25



Further examples of how Alaska state law controls ANCSA corporations on a day to day basis rather than federal law add nothing to the basic proposition. Congress has seen fit to amend ANCSA no less than 17 times<sup>59</sup> since the original enactment in 1971. None of these later enactments have eroded the rule of state governance of ANCSA corporations.

Shee Atika recognizes that the existence of some state regulation is not *per se* inconsistent with the existence of Indian Country. However, when one contrasts the wide range of state regulation which Congress has mandated for ANCSA corporations and their assets against the minimal role of the federal government in the ANCSA corporations' day to day affairs, it seems obvious that Congress did not intend that ANCSA lands which are still owned by the ANCSA corporation to be Indian Country.

The Ninth Circuit majority opinion finds support for its conclusion that Indian Country exists as to ANCSA lands from a statement within the 1988 Amendments to

U.S.C. § 466 (sustained-yield management of forests); 25 U.S.C. § 162a (investment of funds of tribe and individual allottees); 25 U.S.C. §§ 318a, 323-325 (roads and rights-of-way); 25 U.S.C. §§ 349, 372 (issuance of patents to allottees or heirs found to be capable of managing their affairs). See generally *United States v. Mitchell*, 445 U.S. 535 (1980).

<sup>59</sup> See, e.g., Pub. L. No. 94-204, 89 Stat. 1145 (1976); Pub. L. No. 94-273, 90 Stat. 375 (1976); Pub. L. No. 94-456, 90 Stat. 1934 (1976); Pub. L. No. 95-178, 91 Stat. 1369 (1977); Pub. L. No. 96-55, 93 Stat. 386 (1979); Pub. L. No. 96-311, 94 Stat. 947 (1980); Pub. L. No. 96-487, 94 Stat. 2371 (1980); Pub. L. No. 97-468, 96 Stat. 2543 (1982); Pub. L. No. 99-500, 100 Stat. 1783 (1986); Pub. L. No. 99-591, 100 Stat. 3341 (1986); Pub. L. No. 100-241, 101 Stat. 1788 (1988); Pub. L. No. 101-511, 104 Stat. 1856 (1990); Pub. L. No. 102-154, 105 Stat. 990 (1991); Pub. L. No. 102-415, 106 Stat. 2113 (1992); Pub. L. No. 102-497, 106 Stat. 3255 (1992); Pub. L. No. 103-204, 107 Stat. 2413 (1993); Pub. L. No. 104-42, 109 Stat. 353 (1995).

ANCSA, Pub. L. No. 100-241, 101 Stat. 1788 (1988), that such amendments are "neutral" on the question of Indian Country status. The problems with trying to use legislation which was enacted sixteen years after ANCSA became law to divine the intent of the original ANCSA are obvious. The real question is what was the intent behind ANCSA in 1971 based on the plain words which Congress actually employed in 1971. In this regard, ANCSA declares that the ANCSA settlement was to be accomplished " \* \* \* without creating a reservation system or lengthy wardship or trusteeship \* \* \*," (ANCSA § 2(b), 43 U.S.C. § 1601(b)) and contains provisions which revoked Indian allotment and Indian reservation authority in Alaska (ANCSA § 18(a) and § 19(a), 43 U.S.C. § 1617(a) and § 1618(a)). It is difficult to square these provisions with a conclusion that ANCSA lands were nonetheless intended to be Indian Country when those lands are still owned by the ANCSA corporation.

The Ninth Circuit majority opinion also found it significant that Congress has repeatedly included ANCSA corporate lands within the scope of various statutory Indian programs. However, what is significant in the context of this case is not that ANCSA lands are eligible for these Indian programs. Instead, what is significant is the *manner* in which Congress made the ANCSA lands eligible because this demonstrates that Congress has never thought ANCSA corporate lands meet the statutory definition of Indian Country under 18 U.S.C. § 1151. The lands eligible for these statutory Indian programs include those lands which are defined as Indian Country pursuant to 18 U.S.C. § 1151, but when Congress has made ANCSA corporate lands eligible for these programs, it has done so by including *additional* language which references the ANCSA corporate lands directly. Had Congress really believed that ANCSA corporate lands were already Indian Country under 18 U.S.C. § 1151, a cross reference to 18 U.S.C. § 1151 alone would have been sufficient.

For example, § 168(j)(6) of the Internal Revenue Code<sup>60</sup> permits accelerated depreciation of structures upon certain Indian lands. In defining the lands eligible for this tax benefit, Congress referenced § 4(10) of the Indian Child Welfare Act,<sup>61</sup> which ultimately cross references to 18 U.S.C. § 1151. However, Congress also included a further express cross reference within § 168(j)(6) to § 3(d) of the Indian Financing Act of 1974<sup>62</sup> thereby including ANCSA corporate lands *in their status as ANCSA corporate lands*. The implication is obvious: Congress does not believe that ANCSA corporate lands are within the 18 U.S.C. § 1151 definition of Indian Country.<sup>63</sup> It is plain that Congress intends a distinction between the Indian Country lands under 18 U.S.C. § 1151 and the ANCSA corporate lands, and such a distinction is well within the plenary power of Congress relative to Indian affairs.

Thus, whether the test for Indian Country status is ultimately a six part test or a two part test<sup>64</sup> is irrelevant when ANCSA lands are still owned by an ANCSA corporation, given the fact that the local ANCSA corporation and the local tribe are not the same. ANCSA land which

<sup>60</sup> 26 U.S.C. § 168(j)(6).

<sup>61</sup> 25 U.S.C. § 1903(10).

<sup>62</sup> 25 U.S.C. § 1452(d). Indeed, this definitional statute expressly contrasts "Indian reservations" and "Indian allotments" with "land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act".

<sup>63</sup> Congress might also have amended 18 U.S.C. § 1151 itself to expressly make the ANCSA corporate lands Indian Country. It has not done this either.

<sup>64</sup> The Ninth Circuit's majority opinion indicates that a six-point test is to be employed in determining Indian Country status. 101 F.3d at 1311. But the majority opinion also indicates that the set aside and superintendence tests are the "overarching prerequisites to a dependent Indian community". Shee Atika wonders how significant the six-part analysis really is. *Id.*

is still owned by an ANCSA corporation is not "set aside" for the local tribe or the tribal members, and ANCSA land which is still owned by an ANCSA corporation is not Indian Country.

### III. THERE WILL BE SUBSTANTIAL IMPACTS ON SHEE ATIKA AND OTHER ANCSA CORPORATIONS WHICH WERE UNINTENDED BY CONGRESS IF THIS COURT DOES NOT SUBSTANTIALLY MODIFY THE DECISION BELOW.

As Judge Fernandez noted in his concurrence below,<sup>65</sup> the logical conclusion of the Ninth Circuit's majority opinion is that a tribal organization may assert jurisdiction over ANCSA land even when it is still owned by the ANCSA corporation. Other portions of this brief discuss why the Ninth Circuit majority opinion is fundamentally inconsistent with ANCSA and why this Court should make it clear that ANCSA land which is still owned by an ANCSA corporation is not Indian Country, even though Indian Country status is appropriate for the ANCSA lands now owned by Venetie.

This portion of our brief discusses the impact the Ninth Circuit majority opinion may have on Shee Atika and other ANCSA corporations if the Ninth Circuit majority opinion is not substantially modified to eliminate the inference that ANCSA land which is still owned by an ANCSA corporation may be Indian Country. Shee Atika does not offer these examples to litigate in advance whether SCA/STA has these or any other rights *vis a vis* Shee Atika and Sealaska. Rather, these examples highlight the potential problems which will be present from a broad holding that ANCSA lands which are still owned by an ANCSA corporation are Indian Country and subject to the jurisdiction of whatever local tribal organization(s) may assert themselves in the vicinity of ANCSA

<sup>65</sup> 101 F.3d at 1320-1323 (Fernandez, J., concurring).



land. The horrible outcomes Judge Fernandez anticipates are not exaggerated.

As this brief has already indicated, SCA/STA has adopted a constitution that purports to define the geographical limits of its territorial jurisdiction as including Shee Atika's fee-owned ANCSA surface estate and Sealaska's fee-owned ANCSA subsurface estate.<sup>66</sup>

A first potential impact is that of taxation. Under SCA/STA's constitution, SCA/STA may impose taxation upon a vote of the Tribal Council and the confirming vote of SCA/STA's membership.<sup>67</sup> If Shee Atika's ANCSA lands are Indian Country, SCA/STA could assert the ability to tax activities upon those lands (such as timber harvest). As Chief Justice Marshall wrote long ago, the power to tax involves the power to destroy. *McCulloch v. Maryland*, 4 Wheaton 316, 431 (1819).

The SCA/Constitution permits the Tribal Council to impose land use regulations upon tribal lands, to prevent their sale or other disposition, and/or to make such dispositions of those tribal lands as may be appropriate.<sup>68</sup> "[T]ribal lands" arguably include the Shee Atika ANCSA surface estate and Sealaska ANCSA subsurface estate if those lands are a part of Indian Country. Yet Congress expressly mandated<sup>69</sup> the conveyance of the specific Cube Cove timberlands to Shee Atika in satisfaction of Shee Atika's rights under ANCSA § 14(h)(3), 43 U.S.C. § 1613(h)(3), and then decreed in further special legislation<sup>70</sup> that the specific ANCSA conveyance to Shee

<sup>66</sup> SCA/STA Constitution, Article II (attached as Appendix B).

<sup>67</sup> SCA/STA Constitution, Article VII, § 1(e).

<sup>68</sup> SCA/STA Constitution, Article VII, § 1(h), 1(q) and 1(i).

<sup>69</sup> § 506(c) of the Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371, 2409 (1980).

<sup>70</sup> § 315 of the Interior Appropriation Act, Pub. L. No. 97-394, 96 Stat. 1998 (1983). See generally *City of Angoon, et al., v. Hodel, et al.*, 803 F.2d 1016, 1018 (9th Cir. 1986), cert. denied, 484 U.S. 870 (1987).

Atika was intended as a fee conveyance, "confirmed \* \* \* in all respects". Three times the Ninth Circuit has concluded that the intent of Congress was that Shee Atika's Cube Cove lands be available to it for the harvesting of the timber.<sup>71</sup> It seems unlikely, when this history of Shee Atika is understood, that Congress nonetheless wished SCA/STA to have the ability to restrict or even terminate Shee Atika's ability to harvest its ANCSA lands.

Moreover, SCA/STA's Constitution expressly permits the Tribal Council to make assignments of land and water areas "of the Tribe" to SCA/STA's members.<sup>72</sup> Alaska state corporate law permits Shee Atika and Sealaska to distribute their respective ANCSA land only to their own respective shareholders. ANCSA permits the distribution of land by an ANCSA corporation, but only (i) to the ANCSA corporation's own shareholders as a part of a homesite lot program<sup>73</sup> or (ii) to a settlement trust<sup>74</sup> so long as the "sole beneficiaries" of that settlement trust are the shareholders of the ANCSA corporation.<sup>75</sup> ANCSA does not even remotely authorize the assignment of ANCSA land to tribal members in their status as tribal members.

<sup>71</sup> *Shee Atika v. Sealaska Corporation*, 39 F.3d 247, 249-250 (9th Cir. 1994) (Shee Atika's Cube Cove land is valuable principally as a source of timber and Shee Atika has the right to obtain subsurface materials necessary to harvest that timber); *City of Angoon, et al., v. Hodel, et al.*, supra note 70 ("Congress intended Shee Atika to have the opportunity to harvest timber on the Cube Cove land"); *City of Angoon, et al., v. Marsh, et al.*, 749 F.2d 1413, 1418 (9th Cir. 1984) ("inconceivable" that Congress would have denied Shee Atika the timber harvest which was the only real economic use of the Cube Cove lands it received under ANCSA).

<sup>72</sup> SCA/STA Constitution, Article VII, § 1(j).

<sup>73</sup> ANCSA § 21(j), 43 U.S.C. § 1620(j).

<sup>74</sup> ANCSA § 39, 43 U.S.C. § 1629e.

<sup>75</sup> ANCSA § 3(t), 43 U.S.C. § 1602(t).

There is yet another reason that tribal control of ANCSA lands cannot be squared with the purposes of ANCSA. The courts have long recognized that revenue sharing under § 7(i) of ANCSA, 43 U.S.C. § 1606(i), is "one of ANCSA's most important provisions."<sup>76</sup> Under this section, ANCSA regional corporations must redistribute 70% of their revenues from timber and subsurface resources among all the regional corporations. The regional corporations, in turn, are obligated to further redistribute 50% of this shared revenue among certain of their own shareholders and the local village corporations in their region.<sup>77</sup> If a local tribal organization has the power (as SCA/STA claims) to tax a regional corporation's ANCSA lands, restrict use of those lands, or assign those lands to the tribe's members, some or all of the revenues from those lands will not be available for revenue sharing under ANCSA § 7(i). This will defeat in no uncertain terms "ANCSA's important goal of ensuring that revenues derived from the § 7(i) resources be shared among all Natives", and not just the Natives within a particular locale.<sup>78</sup>

### CONCLUSION

Venetie has sovereignty and this court should conclude on the unique facts of this case that the ANCSA lands which Venetie now owns are Indian Country. By contrast, ANCSA lands which are still owned by the ANCSA corporation are not Indian Country. Whether the test for Indian Country status is ultimately a six part test or a two

<sup>76</sup> *Koniag, Inc. v. Koncor Forest Resources*, 39 F.3d 991, 998 (9th Cir. 1994). See also *Tyonek Native Corporation v. Cook Inlet Region, Inc.*, 853 F.2d 727 (9th Cir. 1988); *Chugach Natives, Inc. v. Doyon Ltd.*, 588 F.2d 723 (9th Cir. 1978).

<sup>77</sup> See ANCSA § 7(j) and (m), 43 U.S.C. § 1606(j) and (m). See generally *Koniag, Inc. v. Koncor Forest Resources*, *supra*, 39 F.3d 991, 999 (9th Cir. 1994).

<sup>78</sup> *Koniag, Inc. v. Koncor Forest Resources*, 39 F.3d at 998-999.

part test is irrelevant when ANCSA lands are still owned by an ANCSA corporation, because the local ANCSA corporation and the local tribe are not the same. ANCSA lands which are still owned by an ANCSA corporation are not "set aside" for the local tribe or the tribal members.

There are numerous reasons why the local ANCSA corporation is not the same as the local tribal organization. Congress in the exercise of its plenary authority to regulate affairs of Indians has provided a regime whereby Alaska tribal entities have different members from ANCSA corporations, with different laws to apply to each.

Congress could have made the local ANCSA corporation the alter ego of the local tribal organization, perhaps by requiring incorporation under the IRA as a precondition to receiving the ANCSA settlement. But since Congress did not do this, this Court should conclude that ANCSA lands which are still owned by the ANCSA corporation are not Indian Country, and hold that Venetie's lands are Indian Country only because Venetie has acquired ownership of its former reserve following an ANCSA § 19(b) election.

Respectfully submitted,

BRUCE N. EDWARDS \*  
MICHAEL R. SORENSEN  
SORENSEN & EDWARDS, P.S.  
1201 Third Avenue, Suite 2900  
Seattle, WA 98101  
(206) 224-8225

Attorneys for  
Shee Atika, Incorporated

Dated: July 29, 1997

\* Counsel of Record



## **APPENDICES**

1a

**APPENDIX A**

**DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**CONSTITUTION AND BY-LAWS  
OF THE  
SITKA COMMUNITY ASSOCIATION  
TERRITORY OF ALASKA**

**RATIFIED OCTOBER 11, 1938**

**[DOI Logo]**



CONSTITUTION AND BY-LAWS OF THE  
SITKA COMMUNITY ASSOCIATION,  
TERRITORY OF ALASKA

PREAMBLE

We, a group of Indians having a common bond of residence in the neighborhood of Sitka, Territory of Alaska, in order to promote our welfare through the development and operation of social and economic enterprises, do establish this Constitution and By-laws in accordance with, and by authority of, the Act of Congress of June 18, 1934 (48 Stat. 984), as amended by the acts of June 15, 1935 (49 Stat. 378), and May 1, 1936 (49 Stat. 1250).

ARTICLE I

SECTION 1. The name of this organization shall be Sitka Community Association, Territory of Alaska, hereinafter called the Association.

ARTICLE II—MEMBERSHIP

SECTION 1. *Original Members.*—All persons whose names appear on the census roll, prepared in accordance with the Instructions of the Secretary of the Interior for Organization in Alaska, being all the Indians residing in the neighborhood of Sitka, shall be members of this Association.

SEC. 2. *Loss of Membership.*—(a) Any member may give up his membership at any time upon written notice to the Secretary of the Council, in which case he shall no longer share in the activities and benefits of this Association, but he may be reinstated as a member upon written application filed with the Secretary of the Council and a majority vote of the members of the Association present at any regular meeting.

(b) Any member who, after notice and an opportunity to present his defense, is found guilty by the Association

of fraud or misconduct in his relations with the Association or of working deliberately against the interests of the Association, may be expelled by a two-thirds vote of the members present at any regular or special meeting. A person so expelled may be reinstated as a member upon written application filed with the Secretary of the Council and two-thirds vote of the membership present at any regular meeting.

SEC. 3. *New Members.*—(a) All children of any member who are residents of the town of Sitka shall be members of this Association.

(b) Any Indian who becomes a resident of the neighborhood of Sitka may become a member of this Association after maintaining a permanent residence.

SEC. 4. *Definition of Residence.*—(a) Any person shall be considered a resident of the neighborhood of Sitka who maintains a home within the incorporated limits of the town of Sitka or within the areas now known as "Indian Possessions" and "Cottage Settlement", or in any area in the vicinity of Sitka which may be reserved or otherwise acquired for the use of this Community association. Temporary absences shall not constitute loss of residence.

SEC. 5. *Rule-making Power.*—The Association may make rules and regulations to carry out this article.

ARTICLE III—THE COUNCIL

SECTION 1. *Composition and Functions.*—(a) There shall be a Council composed of the President and six other members elected by the Association.

(b) The Council shall represent the Association in all its undertakings and shall exercise the powers of the Association enumerated in this Constitution. It shall be the duty of the Council to report its activities and the state of the affairs of the Association at each regular meeting

of the Association, at which time the members may outline the policies to be followed by the Council.

SEC. 2. *Election.*—(a) Members of the Council shall be elected by secret ballot on the first Thursday after the third Monday in April.

(b) At the regular meeting of the Association on the third Monday in April the members of the Association shall make nominations and determine the candidates for election.

(c) The Council shall organize itself within 30 days after each annual election date by electing from within its membership a Vice President, and from within or without, a Secretary, a Treasurer, and such other officers as it may deem necessary. Officers elected from without the Council shall not vote therein.

(d) Rules and regulations governing the conduct of elections may be adopted by the Association at any regular or special meeting.

SEC. 3. *Tenure of Office.*—(a) The term of office of each elected officer shall expire when his successor is elected and qualified.

(b) The President of the Council shall be elected annually and shall serve for a term of one year.

(c) Each of the other members of the Council shall be elected to serve for a term of two years.

(d) The first election of the Community Council shall be called and held under the direction of the Principal Teacher at Sitka within three months after the ratification of this Constitution. The members of the Council so elected, other than the President, shall divide themselves into two equal groups "A" and "B" by drawing lots, whereupon the term of office of those in group "A", and of the first President, shall terminate on the regular election date of the second April following, and the term of

office of those in group "B" shall terminate on the regular election date of the third April following. Thereafter, each member of the Council, other than the President, shall serve two years.

#### ARTICLE IV—POWERS OF THE ASSOCIATION

SECTION 1. The Association shall have power:

(a) To negotiate with the Federal and Territorial Governments on behalf of the Association and to advise and consult with representatives of the Interior Department on all activities of the Department that may affect the Association.

(b) To manage and control all its economic affairs and enterprises in accordance with the charter which may be issued under the Act of June 18, 1934.

(c) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(d) To levy dues, fees, and assessments, for Association purposes, on its members and to provide for their collection and for their enforcement through the deprivation of membership privileges. No such dues, fees, or assessments shall be laid except by resolutions of the membership adopted at any regular or special membership meeting.

(e) To organize or to charter associations of its members for economic purposes and to regulate the same.

(f) To prevent the sale, disposition, lease, or encumbrance of any land, interest in land or waters, or other assets of the Association without its consent.

(g) To make assignments of land or water areas of the Association for use and occupancy to members of the Association in accordance with the customs of the Indians forming this Association or with the regulations of the Association.



(h) To protect the natural resources of the Association.

(i) To preserve and cultivate the arts, crafts and culture of the Indians of this community and their customs not in conflict with Territorial law.

#### ARTICLE V—BILL OF RIGHTS

SECTION 1. The Council shall not restrict or in any way abridge the rights of the members of the Association guaranteed under the Constitution of the United States but it shall be its duty to see that the full constitutional rights thereof are maintained and preserved.

SEC. 2. All members of the Association in good standing shall be accorded equal right and opportunity to participate and enjoy the resources, property, and benefits of this Organization.

SEC. 3. All members of this Association over the age of 21 years shall have the right to vote.

#### ARTICLE VI—CHANGE OF OFFICERS

SECTION 1. *Forfeiture of Office, Removal and Recall.*—(a) Any member of the Council or other officer of the Association who is convicted of a felony or any other offense involving dishonesty shall forfeit his office.

(b) Any member of the Council who is absent from the regular meetings of the Council for the period of three months without cause or excuse, may have his seat declared vacant by the Council after notice and an opportunity to be heard.

(c) Upon a petition signed by one-third of the council members of the Association asking the recall of any member of the Council, the Council shall call a special meeting of the Association to vote upon his recall. If the council member is recalled, the Association members shall proceed to elect his successor to fill the unexpired term.

SEC. 2. *Filling Vacancies.*—If the office of the Council member is vacant for any reason, the Council may appoint a successor to serve until the next regular meeting of the Association at which time a member shall be elected to fill the unexpired term.

#### ARTICLE VII—FEDERATION

The Council may for the purpose of forming a federation or union with other organizations of like character appoint a committee to meet with such other organizations and submit its findings to the said Council for appropriate action.

#### ARTICLE VIII—AMENDMENTS

Amendments to this Constitution and By-laws may be proposed by resolution of the Council or of the Association which amendments, if approved by the Secretary of the Interior, shall be effective when ratified by a majority vote of the adult members of the Association voting at an election called for the purpose by the Secretary of the Interior, provided that at least 30 per cent of those entitled to vote shall vote in such election.

#### BY-LAWS OF THE SITKA COMMUNITY ASSOCIATION, TERRITORY OF ALASKA

#### ARTICLE I—DUTIES OF OFFICERS

SECTION 1. The President of the Council shall preside over all meetings of the Association and of the Council, exercising the usual duties of chairman and any others delegated to him. He may vote in Council meetings only in case of a tie or where the vote is by ballot.

SEC. 2. The Vice President shall act as president in the absence or disability of the President.

SEC. 3. The Secretary of the Council shall conduct all correspondence and keep a complete and accurate record of all business transacted at Council or Association meetings. It shall be his duty to give promptly to the Principal Teacher at Sitka for inspection and forwarding to the Juneau Office of the Office of Indian Affairs two copies of all minutes of all regular and special meetings of the Council or Association.

The Secretary shall record all rules, regulation, and resolutions in appropriate books, indexing the same and assigning a short title, and may publish the same for the information of the Association.

The Secretary shall notify each person of his election to an office of the Association within five days thereof.

SEC. 4. The Treasurer of the Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Council, whether Association funds or other funds for which the Council is responsible. He shall deposit all such funds in such banks or elsewhere as directed by the Council and, when a Federal Charter is adopted, in accordance with such charter. He shall make and preserve a faithful record of such funds and shall report to the Council all receipts and expenditures and the amount and nature of all funds in his possession or custody. He shall not pay out or authorize disbursement of any funds for which he is responsible except upon written authorization of the Council.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the Council and acceptable to the Juneau Office of the Office of Indian Affairs, and at such other times as the Council shall direct. He shall give two copies of the auditor's report and, once each month, two copies of his trial balance to the Principal Teacher at Sitka for inspection and forwarding to the Juneau Office.

The Treasurer shall be required at the request of the Council or the Commissioner of Indian Affairs to give bond satisfactory to the Council and the Commissioner. The Treasurer shall be present at all special or regular meetings of the Council. The Treasurer may with the advice and consent of the Council appoint assistants.

SEC. 5. The duties of all appointive officers or agents shall be clearly defined by a resolution of the Council at the time of their appointment.

SEC. 6. All accounts, records, books and minutes of the Association shall be subject to examination by members of the Association and by the Commissioner of Indian Affairs or his authorized representative.

## ARTICLE II—QUALIFICATIONS OF OFFICERS

SECTION 1. No person may be a candidate for any elective office unless he has the qualifications of a voter.

## ARTICLE III—INSTALLATION OF OFFICERS

Each person appointed or elected to an office shall subscribe to the following oath of office before entering upon the duties thereof:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies; that I will carry out faithfully and impartially the duties of my office as \_\_\_\_\_ to the best of my ability; that I will promote and protect the best interests of the Association, in accordance with this Constitution and By-laws."

## ARTICLE IV—TIME AND PLACE OF COUNCIL MEETINGS AND ORDER OF BUSINESS

SECTION 1. The Council shall meet on the first Monday of each month at 7:30 p.m., unless otherwise ordered by resolution, and may meet at such other times as may be voted by the Council. The President or three of the Coun-



cil members may call a special meeting on two days' actual notice to the Council members.

SEC. 2. Unless otherwise ordered by resolution of the Council meetings shall be held at the principal place of business of the Association, which place shall be such location within the town of Sitka or Native Village as may be determined by the Association by resolution.

SEC. 3. A number equal to one-half of the membership of the Council exclusive of the President shall constitute a quorum.

SEC. 4. The following shall be the order of business unless changed by or with the consent of the council, namely:

- Call to order by the President;
- Roll call;
- Announcement of quorum;
- Reading the minutes of the last meeting;
- Correction or approval of the minutes of last meeting;
- Treasurer's report;
- Report of Committees;
- Unfinished business;
- New business;
- Adjournment.

SEC. 5. The Council may adopt regulations governing its procedure, and in the absence thereof, Robert's Rules of Order shall govern.

SEC. 6. Every resolution, after the explanatory clauses, shall begin with the words: "*Be it resolved by the Council of the Sitka Community Association.*"

#### ARTICLE V—MEETINGS OF THE ASSOCIATION

SECTION 1. Regular meetings of the Association shall be held twice a year on the first Monday in November and the third Monday in April.

Special meetings may be called at any time by the Council and must be so called upon petition of one-third of the adult members of the Association. For such meetings three days' posted or written notice must be given.

SEC. 2. One-fifth of the adult membership shall constitute a quorum at any meeting.

SEC. 3. Meetings shall be held at the principal place of business unless otherwise ordered by resolution of the Association or otherwise specified in the notice of a special meeting.

#### ARTICLE VI—DEFINITIONS

SECTION 1. Whenever the term "Principal Teacher at Sitka" is used it shall be understood to mean the Principal Teacher for the Department of the Interior, Office of Indian Affairs, or any successor official representing the Office of Indian Affairs in Sitka.

SEC. 2. Where the masculine pronoun is used in this Constitution and By-laws and other general documents of the Association, it shall be understood to include the feminine.

SEC. 3. The word "adult" means a person who is 21 years of age or over.

#### ARTICLE VII—RATIFICATION OF CONSTITUTION AND BY-LAWS

This Constitution and By-laws shall be effective from and after the date of its ratification by a majority vote of those entitled to vote who vote at an election called for the purpose by the Secretary of the Interior, provided that at least 30 per cent of those entitled to vote shall vote in such election, such ratification to be formally certified by the Election Board.

The persons entitled to vote are all the adult Indians who are residing in the neighborhood of Sitka, Territory of Alaska, and whose names appear on a roll of such In-

dians compiled under the Instructions of the Secretary of the Interior.

This Constitution and By-laws are herewith approved by the Assistant Secretary of the Interior and submitted for ratification by the group of Indians having a common bond of residence in the neighborhood of Sitka, Territory of Alaska, in a popular referendum called and held under the Instructions of the Secretary of the Interior.

OSCAR L. CHAPMAN,  
*Assistant Secretary of the Interior.*

[SEAL]

WASHINGTON, D.C., July 13, 1938.

#### CERTIFICATION OF ADOPTION

Pursuant to an order, approved July 13, 1938 by the Assistant Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the group of Indians having a common bond of residence in the neighborhood of Sitka, Territory of Alaska, and was on October 11, 1938 duly ratified by a vote of 145 for and 3 against, in an election in which over 30 per cent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 084), as amended by the act of June 15, 1935 (49 Stat. 378).

RALPH YOUNG, SR.,  
*Chairman, Election Board.*  
LAWRENCE WIDMARK,  
*Secretary, Election Board.*

RAYMOND L. WOLFE,  
*Government Representative.*

#### APPENDIX B

### CONSTITUTION OF THE SITKA TRIBE OF ALASKA

#### PREAMBLE

We, the citizens of the sovereign Sitka Tribe of Alaska, in order to establish a more perfect tribal government, to preserve and exercise the Tribe's inherent sovereign rights and powers, to provide for our posterity, to conserve tribal lands and resources, and to establish justice, pursuant to Tlingit tribal law and custom and federal law, make for ourselves this Constitution by authority of the Act of June 18, 1934, (48 Stat. 984) as amended. The Constitution of the Sitka Community Association approved by the Secretary of the Interior on July 13, 1938 is hereby superseded to the extent not in conflict with this Constitution.

#### ARTICLE I. NAME

The Tribe, formerly known as the Sitka Community Association, shall hereafter be known as the "Sitka Tribe of Alaska" a federally recognized sovereign tribe.

#### ARTICLE II. TERRITORY AND JURISDICTION

The jurisdiction of the Sitka Tribe of Alaska shall extend to all lands constituting the Native Village of Sitka and the areas formerly known as "Indian Possessions" and "Cottage Settlement", and to all surrounding areas of Indian Country, if any, including all customary and traditional use and access areas in the vicinity of Baranof Island, Chichagof and surrounding islands, and all fee lands and allotments and lands owned by Sealaska, Inc. or Shee-Atika, Inc. located therein (the Native corporations established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92-203) as amended to hold the land and other benefits provided by Congress in partial



compensation for the extinguishment of the Tribe's aboriginal land rights), to the fullest extent permitted by federal and tribal law.

### ARTICLE III. CITIZENSHIP

Section 1. *Citizenship.* All persons whose names appear on the official citizenship roll of the Tribe dated October 29, 1991 shall be citizens of the Tribe.

Section 2. *Children of Citizens.* All children born to tribal citizens shall be enrolled in the Tribe.

Section 3. *Loss of Citizenship or Other Rights.* Any tribal citizen shall be deemed to have relinquished his or her citizenship by enrolling in another tribe, and may relinquish his or her citizenship in writing or, after notice and an opportunity to present his defense, may have one or more of his or her citizenship rights (including voting rights or the right to hold elective office) taken away for good cause shown (including being found guilty by the Tribe of fraud or misconduct in his or her relations with the Tribe or of working deliberately against the interests of the Tribe) pursuant to an enrollment ordinance adopted in accordance with the provisions of this Article and upon the affirmative vote of two-thirds of the eligible voters present at a General Citizenship meeting. A person whose citizenship rights have been involuntarily taken away may only have his or her rights reinstated upon the affirmative vote of two-thirds of the eligible voters present at a General Citizenship meeting.

Section 4. *New Citizens.* Any person who has voluntarily relinquished his or her citizenship in the Tribe, and any other person who is a member of (or is eligible for membership in) a Native American tribe, who sets up a permanent home in the vicinity of the Tribe, who renounces in writing his or her membership in any other Tribe, who establishes social or cultural relations with the Tribe, and who agrees to be bound by this Constitu-

tion, may be made a tribal citizen upon such terms and conditions as may be established pursuant to an enrollment ordinance adopted in accordance with the provisions of this Article.

Section 5. *Citizenship and Enrollment Rules.* The Tribal Council shall adopt an ordinance establishing rules and procedures for citizenship and enrollment, consistent with the provisions of this Constitution.

### ARTICLE IV. GOVERNING BODY

Section 1. *Tribal Council and Officers.* The governing body of the Sitka Tribe of Alaska shall be known as the Sitka Tribal Council. The Tribal Council shall consist of a Chairman and eight (8) other members, all of whom shall be entitled to vote. The nine (9) Council members shall be elected directly by the voters. The Tribal Council shall itself each year elect from its members a Vice-Chairman, a Secretary and such other officers as it may deem appropriate.

Section 2. *Duties of Officers.* The Chairman shall preside at all meetings of the Tribe and of the Tribal Council and shall execute on behalf of the Tribe all contracts, leases or other documents approved by the Tribal Council. The Chairman may vote in all matters except on the matter of the Chairman's removal. The Chairman shall have general supervision of all other officers, employees, agents and committees and shall see that their duties are properly performed. The Chairman shall be the official representative of the Tribe but shall make no financial or other commitment on behalf of the Tribe without the Tribal Council's approval. The Vice-Chairman shall assist the Chairman when called upon to do so and, in the Chairman's absence or disability, shall have all the rights, privileges, duties and responsibilities of the Chairman. The Secretary shall keep the minutes of all Council meetings and shall attest to the enactment of all resolutions and

ordinances. The duties of all other officers shall be specified by the Tribal Council.

Section 3. *Eligibility.* Any citizen of the Tribe thirty (30) years of age or older shall be qualified to seek and hold office on the Tribal Council, provided that he or she has been living within the area described in Article II of this Constitution for at least one (1) year directly preceding the election, unless such right to hold elective office has been taken away pursuant to an enrollment ordinance in accordance with Article III. In any one election a person may only seek to hold one office on the Tribal Council. A Council member who is elected Chairman shall resign his or her office as Council member before entering upon the official duties of Chairman.

Section 4. *Term.* Council members shall be elected by secret ballot. The terms of the Council members other than the Chairman shall be staggered as follows: At the first general election following the adoption of this Constitution, the voters shall elect four (4) Council members for one-year terms (being the Council members elected by least votes), four (4) Council members for two-year terms (being the Council members elected by the most votes), and the Chairman for a two-year term. Thereafter, at each annual general election the voters shall elect four (4) Council members for two-year terms. The voters shall elect the Chairman every two years. Beginning with the first general election following the adoption of this Constitution, each Council member shall serve until his or her successor has been elected and seated. All Council members holding office at the time this Constitution is adopted shall remain in office until the next general election referred to in this Section.

Section 5. *General Meetings.* The Tribal Council shall meet each month on a date, the place to be fixed by action of the Tribal Council, and in such other times and places as may be designated by action in a majority of the Tribal

Council or by the Chairman. The Chairman shall direct that personal notice be provided to each Council member no less than forty-eight (48) hours prior to any meeting. A quorum to transact business shall consist of at least five (5) Council members. To be effective, a majority of the members present shall vote on all motions, resolutions and ordinances. The Tribal Council shall keep a complete and accurate record of all proceedings, including reports of actions taken at every meeting.

Section 6. *Oath of Office.* Before entering upon their official duties, all members of the Tribal Council and all other tribal officers shall take and subscribe to the following oath or affirmation to be administered by a qualified officer:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Tlingit customs, laws and Constitution of the Sitka Tribe of Alaska, that I will promote and protect the best interests of the Tribe, and that I will faithfully discharge the duties of my office according to the best of my ability."

Section 7. *Forfeiture.* Any member of the Tribal Council who (a) submits a written resignation, (b) is convicted by any competent court of a felony or any other offense involving dishonesty while in office, (c) has his or her citizenship rights taken away, in whole or in part, for good cause shown, pursuant to Article III, Section 3, or (d) is absent from three (3) successive monthly Tribal Council meetings without being excused by the Tribal Council for good cause shown, shall automatically forfeit his or her office and shall be so notified by the Chairman in writing.

Section 8. *Removal.* Any member of the Tribal Council found guilty by the Tribal Council of neglect of duty, gross misconduct in office, or any offense involving dishonesty may be removed from office by the Tribal Council by at least five (5) Tribal Council members voting by



secret ballot, *provided*, that such member shall first be given ten (10) days notice in writing of the charges against him or her and be given an opportunity to answer such charges before the Tribal Council. No member of the Tribal Council shall preside over the meeting at which his or her removal is being considered. All questions of removal under this section shall be resolved by the Tribal Council and the decision of the Tribal Council shall be final.

Section 9. *Recall*. Any member of the Tribal Council may be recalled by the Tribal voters if a valid petition requesting such recall and setting forth the reasons, signed by at least thirty percent (30%) of the eligible voters, is presented to the Tribal Council. The Tribal Council shall within thirty (30) days of receipt of such petition call an election to consider the recall of the named official, such election to be conducted pursuant to the election ordinance. If a majority of the voters vote in favor of the recall at an election at which at least 30% of the eligible voters participate, the official shall be removed. No official may be subjected to recall proceedings more than once in the course of his or her term.

Section 10. *Vacancies*. The Tribal Council shall appoint a person who meets the criteria of Section 3 of this Article to fill a vacancy caused by the death, forfeiture, removal, resignation or recall of a Council member, and such appointed person shall serve the full unexpired term of the member and thereafter until a successor has been duly elected and seated; *provided*, that in the event of a vacancy in the position of Chairman, the Vice Chairman shall temporarily vacate his or her position and automatically serve as Chairman until a successor Chairman has been duly elected and seated at the next general election for the balance, if any, of the unexpired term of office of the Chairman, *provided further* that in such an event the Tribal Council shall appoint a person who meets the criteria of Section 3 of this Article to fill the resulting

vacancy on the Council, such appointed person to serve until a successor Chairman has been duly elected and seated, and the Tribal Council shall thereafter elect from its members an Acting Vice Chairman.

#### ARTICLE V. GENERAL CITIZENSHIP MEETINGS

A meeting of the General Citizenship may be called at any time by the Tribal Council, *provided*, that the Tribal Council shall call such a meeting at least once a year. A General Citizenship meeting shall be called by the Tribal Council upon receipt of a petition specifically requesting such a meeting signed by no less than thirty percent (30%) of the eligible voters. Written notice of General Citizenship meetings shall be posted in a public place and advertised generally in the community. A quorum shall be comprised of twenty percent (20%) of the eligible voters of the Tribe. The Tribal Council shall adopt an ordinance establishing rules and procedures for General Citizenship meetings. At such meetings the General Citizenship shall furnish its advice to the Tribal Council.

#### ARTICLE VI. ELECTIONS

Section 1. *General Elections*. The Tribal Council shall select a date in November of every year for regular elections, and shall give at least thirty (30) days notice of such elections, posted in a public place.

Section 2. *Special Elections*. The Tribal Council shall call special elections as necessary provided that at least ten (10) days notice of such special elections is provided by posting in a public place.

Section 3. *Voter Qualification*. Any citizen of the Tribe eighteen (18) years of age or older shall have the right to vote in all tribal elections, provided that he or she has been domiciled within the area specified in Article II of this Constitution for at least six (6) months directly preceding the election, unless such right to vote has been

taken away pursuant to an ordinance adopted in accordance with Article III.

Section 4. *Election Ordinance.* The Tribal Council shall adopt an election ordinance establishing rules and procedures to govern all aspects of voter registration, campaigns, nominations, candidate filings, elections, election protests, and related matters.

#### ARTICLE VII. POWERS OF THE TRIBAL COUNCIL

Section 1. *Powers.* The Tribal Council shall exercise the following powers by appropriate motion, resolution or ordinance, subject to any limitations imposed by the Constitution or applicable laws of the United States:

- a. To negotiate with tribal, federal, state, foreign and local governments and others on behalf of the Tribe and to advise and consult with representatives of the United States and the State of Alaska and other states on all activities which may affect the Tribe.
- b. To promote and protect the health, education, economic and general welfare of the citizens of the Tribe and their children, and to administer charity and such other services as may contribute to the social, traditional, cultural and economic development of the Tribe.
- c. To levy dues, taxes or license fees subject to approval by the tribal voters, and to otherwise raise revenue.
- d. To regulate the internal affairs and procedures of the Tribal Council.
- e. To encourage, guard and foster the traditional Tlingit cultural practices of the Sitka Indian people, including the protection of artifacts and archaeological sites and the promotion of Tlingit arts and crafts.

- f. To authorize or direct subordinate boards, committees, Tribal officials, or Tribal employees to administer the affairs of the Tribe and to carry out the directives of the Tribal Council.
- g. To form a federation or union with other tribes subject to approval by the Tribal voters.
- h. To manage, lease, exchange, acquire, or otherwise deal with Tribal or other property, and to protect and preserve the Tribal property and the wildlife and natural resources within those areas under the jurisdiction of the Tribe.
- i. To prevent the sale, disposition, lease or encumbrance of any property (including lands, waters, interests therein and all other assets) of the Tribe without the consent of the Tribal Council.
- j. To make assignments of land or water areas of the Tribe for use and occupancy to citizens of the Tribe in accordance with the customs of the Tribal citizens or with the laws and regulations of the Tribe.
- k. To administer any funds within the control of the Tribe.
- l. To engage in Tribal economic development enterprises for the benefit of Tribal citizens.
- m. To provide for the maintenance of law and order and the administration of justice, including through the establishment of an appropriate Tribal judicial system.
- n. To safeguard and promote the peace, safety, morals, physical and general welfare of the citizens of the Tribe and their children.
- o. To employ legal counsel, provided that the exercise of this power shall be subject to the ap-



proval of the Secretary of the Interior so long as required by federal law.

- p. To organize and charter enterprises, corporations and associations and to join or charter housing authorities.
- q. To zone, exercise the power of eminent domain and otherwise regulate land use within those areas under the jurisdiction of the Tribe.
- r. To regulate inheritance among citizens and their children whether by intestacy or otherwise, and other domestic relations matters.
- s. To practice the rules and procedures necessary to give effect to any provision of this Constitution.

Section 2. *Reserved Powers.* All rights and powers not delegated to the Tribal Council in this Constitution are reserved to the people and may be exercised by the citizens of the Tribe through the adoption of amendments to this Constitution except as otherwise provided in this Constitution.

Section 3. *Sovereign Immunity.* Nothing in this Constitution constitutes a waiver of the sovereign immunity of the Tribe. The sovereign immunity of the Tribe may only be waived by express resolution of the Tribal Council adopted upon the affirmative vote of no fewer than seven Council members including the Chairman. No resolution generally waiving the Tribe's sovereign immunity shall be valid. To be valid a resolution waiving the Tribe's sovereign immunity must be specific and limited as to its duration, the grantee, the transaction, the court having jurisdiction and the law to be applied, and, if subject to the waiver, the property or funds of the Tribe subject to the waiver. No resolution shall be deemed a general consent to the levy of any judgment, lien or attachment upon the

funds or property of the Tribe other than the funds or property specifically pledged, assigned or otherwise expressly made subject to levy in the resolution.

Section 4. *Annual Reports.* The Tribal Council shall make an annual report of its activities, including a budget report, to the general citizenship at the annual general citizenship meeting.

Section 5. *Actions of the Tribal Council.* All ordinances, resolutions and motions (other than routine motions) shall be acted upon by the Tribal Council by a roll call vote and the vote of each member shall be recorded.

Section 6. *Ordinances.* An ordinance shall take effect only after being posted in a public place for thirty (30) days after its adoption by the Tribal Council provided that an emergency ordinance shall take effect immediately. All enacted ordinances shall be made available for inspection by citizens of the Tribe at the Tribal office.

Section 7. *Initiative and Referendum Procedures.* The citizens of the Tribe may propose and enact laws by the initiative, and approve or reject enactments of the Tribal Council by the referendum. An initiative may only propose laws which the Tribal Council is empowered to enact. An initiative or referendum is proposed by a petition setting forth on the top of each page the proposed law to be initiated or the ordinance to be referred, and carrying the signature, printed name and address of no fewer than thirty percent (30%) of the eligible Tribal voters, provided that the Tribal Council may initiate a referendum on its own motion without a petition. A referendum petition may only be filed within ninety (90) days of the enactment of the ordinance to which it is directed. The text (or a summary thereof) of the proposed law or action shall be placed on the ballot of the first special or general Tribal election held more than sixty (60) days after the filing of the initiative or referendum petition, pro-

vided that an election on such petition shall be held no more than 120 days after its filing, provided further that if prior to the election the Tribal Council takes action to enact or repeal an ordinance substantially similar to the measure proposed, the petition shall be deemed void. An initiated law becomes effective thirty (30) days after certification of the results of an election at which a majority of the votes cast are in favor, and for two (2) years thereafter may be amended by the Tribal Council but not repealed. An ordinance rejected by referendum is void thirty days after certification of the results of an election at which a majority of the votes cast favor rejection. No initiative or petition may apply to the dedication of Tribal revenues, to Tribal appropriations, to the establishment of Tribal judicial systems, to local or special legislation, or to the repeal of laws necessary for the immediate preservation of the public peace, health, or safety.

#### ARTICLE VIII. AMENDMENTS TO THE CONSTITUTION

This Constitution may be amended by a majority vote of the qualified voters of the Tribe at an election called by the Secretary of the Interior in which at least thirty percent (30%) of the qualified voters take part. The Secretary shall call such an election on a proposed constitutional amendment at the request of five (5) of the nine (9) Tribal Council members or upon petition of thirty percent (30%) of all citizens of the Tribe eighteen (18) years of age or older. To the extent required by federal law, amendments to the Constitution shall become effective when approved by the Secretary of the Interior or his or her authorized representative.

#### ARTICLE IX. BILL OF RIGHTS

Section 1. The Tribe shall not make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the

people peaceably to assemble and to petition for a redress of grievances.

Section 2. The Tribe shall not violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Section 3. The Tribe shall not subject any person for the same offense to be twice put in jeopardy.

Section 4. The Tribe shall not compel any person in any criminal case to be a witness against himself.

Section 5. The Tribe shall not take any private property for a public use without just compensation.

Section 6. The Tribe shall not deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense.

Section 7. The Tribe shall not require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of twelve (12) months or a fine of \$5,000.00 or both, except to the extent as may be authorized by amendment to the federal Indian Civil Rights Act.

Section 8. The Tribe shall not deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.



Section 9. The Tribe shall not pass any bill of attainder or ex post facto law.

Section 10. The Tribe shall not deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

#### ARTICLE X. ADOPTION

This Constitution, when adopted by a majority vote of the qualified voters of the Sitka Tribe of Alaska voting at an election called for that purpose by the Secretary of the Interior or his authorized representative in which at least thirty percent (30%) of those entitled to vote participate, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of his approval, as provided in the Indian Reorganization Act.

#### ARTICLE XI. SAVINGS AND SEVERABILITY

Section 1. All enactments and official acts of the Sitka Tribe of Alaska, previously known as the Sitka Community Association, promulgated or adopted prior to the effective date of this Amended Constitution shall remain in full force and effect to the extent they are not inconsistent with any provision of this Constitution, and in the event of any conflict with this Constitution, the provisions of this Constitution shall control.

Section 2. The provisions of this Constitution are severable, and should any provision of the Constitution be determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of any other provision of this Constitution.

July 25, 1990  
(With May 1, 1991 and  
October 29, 1991 Revisions)

#### CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order issued on November 6, 1991 by the United States District Court, District of Alaska, the Constitution of the Sitka Community Association was submitted to the qualified voters of the Sitka Community Association, and was on November 26, 1991, duly adopted/rejected by a vote of 139 for, and 70 against, and 1 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 210 members entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

/s/ Regina J. Baret  
Chairman Election Board

/s/ Adelaide L. Jacobs  
Election Board Member

/s/ Bertha L. Karres  
Election Board Member

DATE: December 10, 1991

# CERTIFICATE OF APPROVAL

I, Eddie F. Brown, Assistant Secretary—Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Sitka Tribe of Alaska, formerly known as the Sitka Community Association. This approval shall not be construed to validate any assertion that the Sitka Tribe of Alaska has governmental authority over lands (including management of, or regulation of the taking of fish and wildlife) or persons who are not members of the tribe, absent a ruling by a court of competent jurisdiction, an opinion of the Solicitor of the Department of the Interior or an Act of Congress subsequent to the date of the certification which indicates the existence of such authority over lands or non-members. This Constitution is effective as of this date; *Provided*, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

/s/ Eddie F. Brown  
Assistant Secretary  
Indian Affairs

Washington, D. C.

Date: Jan. 3, 1992

# APPENDIX C

## UNITED STATES DEPARTMENT OF THE INTERIOR

Office of the Secretary  
Washington, D.C. 20240

[Dept. Logo]

Jan. 8, 1992

Mr. Niles C. Cesar  
Director  
Juneau Area Office  
Bureau of Indian Affairs  
Federal Building  
P.O. Box 3-8000  
Juneau, Alaska 99802-1219

Dear Mr. Cesar:

We have received the results of the election held on November 26, 1991, by the qualified voters of the Sitka Community Association. The election was called in response to an order issued on November 6, 1991, by the United States District Court, District of Alaska, in *Sitka Community Association v. Lujan*, Civil No. A91-492, which permitted the qualified voters of the Sitka Community Association to vote on the adoption or rejection of a proposed revised constitution.

As evidenced by the completed Certificate of Results of Election, the Constitution of the Sitka Tribe of Alaska was duly adopted by a vote of 139 for and 70 against in an election in which at least thirty percent (30%) of the 210 members registered and entitled to vote cast their ballots. There are, however, a number of things about the adoption of the constitution which I find troubling and believe should be noted.

The simultaneous voter registration and absentee ballot procedure adopted to meet the court deadline virtually guaranteed that the voter participation would satisfy the



statutory requirement of 30% voter participation. I am seriously disappointed, however, in the low voter participation. When the Association insisted on the election being held before Thanksgiving following the court's order of November 6, the Bureau appears to have done everything it reasonably could to advertise the election and the need to register to vote. In the end, while there were 2669 names on the membership roll, only 210 participated. Moreover, the number of votes in favor of the amended constitution, 139, was less than the 145 that adopted the original document 53 years earlier.

The Tribal Council rejected our suggestion to delete the reference in the Preamble to the group's "inherent sovereign rights and powers" and our suggestion to delete the reference to certain powers in Article VII. The Council apparently claims to be the modern-day successor to the historic Tlingit Tribe of Sitka. It is clear from the face of the original Constitution of the Sitka Community Association, however, that it is an organization of "Indians residing in the neighborhood of Sitka." See Article II—Membership. There may well have been in historic times a band or group of Tlingit Indians which inhabited the area of Sitka. Yet, it was the Indians residing in the neighborhood of Sitka not any historic Band or group which reorganized pursuant to the Indian Reorganization Act. In any event, the Preamble is not an operative part of the document. By referring to itself in the amended Article I as a "federally recognized sovereign tribe," the Association has added nothing of substance and not altered the Association's fundamental nature. Moreover, whatever the new Tribal Council's powers may be, the exercise of those powers under Article VII is made expressly "subject to any limitations imposed by the Constitution or applicable laws of the United States." Hence, we do not feel compelled to argue further over the Association's generous use of the word "sovereign."

In our technical comments of October 19, we indicated that the Association's unqualified assertion of the existence of

"Indian country," including specific lands, was misleading and contrary to law. In its October 29, 1991, modification of its proposed amendment of the constitution, the Association rearranged some of the phrases and inserted the phrase "if any" between "Indian country" and the description of included lands.

#### ARTICLE II—TERRITORY AND JURISDICTION now reads:

The jurisdiction of the Sitka Tribe of Alaska shall extend to all lands constituting the Native Village of Sitka and the areas formerly known as "Indian Possessions" and "Cottage Settlement", and to all surrounding islands, and all fee lands and allotments all customary and traditional use and access areas in the vicinity or Baranof Island, Chichagof and surrounding islands, and all fee lands and allotments and lands owned by Sealaska, Inc. or Shee-Atika, Inc. located therein (the Native corporations established pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203) as amended to hold the land and other benefits provided by Congress in partial compensation for the extinguishment of the Tribe's aboriginal land rights), to the full extent permitted by federal and tribal law. (Emphasis added.)

The resulting language is somewhat awkward grammatically. In the original constitution, membership is defined in terms of residence in the neighborhood of Sitka which is in turn defined to include the incorporated limits of the town of Sitka and the areas known as "Indian possessions" and "Cottage Settlement." Thus, there may be some justification in the amendment for stating that the justification of the tribe extends to those lands. While the tribe's jurisdiction on these lands may be limited to controlling the actions of its members while on these lands, we need not decide fully the nature and extent of its jurisdiction, if any, on these lands since it has limited its claimed jurisdiction to that permitted by federal law.

The insertion of the qualifying phrase "if any" between "Indian country" and the description of the included lands is not entirely clear. However, I believe that the phrase "if any" must qualify both the existence of "Indian country" generally and the existence of the included lands as "Indian country." If read in this way, I am satisfied that the existence of any possible "Indian country" is sufficiently qualified that, when read with the constitution as a whole and the approval certificate, it is not contrary to applicable law.

I also remain concerned about the sufficiency of the tribe's membership or citizenship roll under the amended constitution. The Association agreed to identify its base roll with a specific date but rejected our suggestion that the roll be approved by the Area Director. The roll which was submitted raises a number of questions. Only slightly over half of those on the roll (1,374 of 2669) list their residence as Sitka, although residence in the neighborhood of Sitka is a requirement for membership under the original constitution. About 7% (or approximately 188) of the names list a non-Alaska city as their residence. Over 20% (or approximately 585) don't list any residence. While a temporary absence does not result in a loss of residence under the original constitution, it is quite specific as to requiring residence to become a member. About 15% do not list any tribal affiliation so we are not even certain if they are "Indians" within the definition of the IRA. However, the list referred to in the amended constitution was compiled pursuant to the original constitution. All the persons on it must meet the requirements of the original constitution. Approval of this amended constitution with its reference to the October 1991 base roll must not be construed as approving the reformation of an organization on a basis other than residence in the neighborhood of Sitka.

Notwithstanding these concerns but having noted them for the record, the Constitution of the Sitka Tribe of Alaska,

formerly known as the Sitka Community Association, is hereby approved pursuant to the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended and delegated to me by 230 D.M. 2.4, and in accordance with the terms of our letter of October 19, 1991. Please deliver the enclosed document to the community.

Sincerely,

/s/ EDDIE F. BROWN  
Assistant Secretary—  
Indian Affairs

Enclosure

cc: President, Sitka Tribal Council  
P.O. Box 1450  
Sitka, AK 99845  
Area Director, Juneau



## APPENDIX D

[State Logo]

LAWS OF ALASKA  
1972

Source CSHB 731

Chapter No. 70

## AN ACT

Implementing the Alaska Native Claims Settlement Act;  
and providing for an effective date.

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BE IT ENACTED BY THE LEGISLATURE OF THE  
STATE OF ALASKA:

• Section 1. PURPOSE. It is the purpose of this Act to implement the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) by amending state law to resolve those ambiguities, conflicts and problems directly or impliedly created by the enactment by Congress of the Alaska Native Claims Settlement Act. It is also the purpose of this Act to complement through state policy, in a reasonable and fair manner, the federal policy expressed in that Act.

• Sec. 2. AS 13.30 is amended by adding a new section to read:

Sec. 13.30.115 INHERITANCE OF CERTAIN STOCK. (a) Until December 18, 1991, stock in a corporation organized under the laws of Alaska pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) which is inalienable under that Act is not subject to probate. Upon the death of the holder, if the stock does not pass by the testamentary disposition clause on the stock certificate,

properly executed, it passes by will or intestate succession. In such a case, the determination of the person entitled to the stock shall be made by the appropriate regional corporation on the basis of an affidavit, furnished to it and to the corporation which issued the stock, showing the right of the person entitled to the stock to receive it and to have a new certificate issued to him. The affidavit, accepted in good faith by a corporation, has the same effect as an affidavit under sec. 4 of this chapter, and the person entitled to the stock, if the affidavit is not accepted, has the remedy set out in sec. 5 of this chapter. In case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the superior court.

(b) Each certificate representing stock in a corporation organized pursuant to the Alaska Native Claims Settlement Act shall bear provisions, on its reverse side, containing blanks to be filled in by the owner, constituting a last will and testament for the purposes of this section and sec. 7(h)(2) of the Alaska Native Claims Settlement Act insofar as the shares represented by that certificate are concerned during the period of its inalienability. The clause must be signed by the owner, dated and notarized. This testamentary disposition may be changed from time to time or revoked, and it governs unless there is a subsequently executed formal will making the specific disposition of the stock.

(c) When ownership of share passes by devise or inheritance or as a result of court action, the shares shall be partitioned, insofar as practicable, in whole shares among those entitled to them.

(d) If a deceased shareholder has failed to dispose of his stock by will and has no heirs under the applicable laws of intestacy, his shares escheat to the corporation.

(e) The situs of inalienable stock of all corporations organized under the Alaska Native Claims Settlement Act is Alaska, until December 18, 1991.

(f) Where appropriate, terms used in this section have the meanings set out in AS 13.45.020(a). In this section "stock" includes membership in a corporation organized under AS 10.20 and inchoate rights to stock.

• Sec. 3. AS 22.10.020 is amended by adding a new subsection to read:

(d) The superior court, in an action for divorce, separation, or child support, affecting inalienable stock in a corporation organized under the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688), may order the stock transferred to the spouse, a child, or a guardian or custodian for a child, but may not order it sold on the open market or transferred to other persons.

• Sec. 4. AS 38.15 is amended by adding new sections to read:

**ARTICLE 2. MANAGEMENT CONTRACTS  
AND LAND EXCHANGES;  
P.L. 92-203 CORPORATIONS.**

Sec. 38.15.050. **CONTRACTS BETWEEN DEPARTMENT OF NATURAL RESOURCES AND P.L. 92-203 CORPORATIONS.** A corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) may contract with the state Department of Natural Resources for the management of land; however, no sale, lease, exchange or other disposal of this land may be made without the approval of the corporation owning it. The contract is terminable upon reasonable notice by either party to it; it may cover all or a portion of the land of the corporation,

and shall provide for the terms of management by reference to law or regulation or otherwise. The Department of Natural Resources is authorized to receive and expend, subject to appropriation, funds necessary to carry out its functions under this section.

Sec. 38.15.060. **EXCHANGE OF LAND.** (a) With the consent of the governor, a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) which would otherwise be entitled to select land within the area withdrawn by sec. 11(a)(1)(A) and (B) of the federal Act, which, however, has been selected by and patented to the state before December 18, 1971, may obtain up to 23,040 acres of this land, if it has not been disposed of or developed, by exchanging land or interests in land with the state.

(b) An individual Native (as defined in the federal Act) or a corporation referred to in (a) of this section may exchange land or an interest in land with any other individual Native or corporation referred to in (a) of this section or the state for the purpose of effecting land consolidations or to facilitate the management or development of the land.

(c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

• Sec. 5. AS 43.80 is amended by adding a new section to read:

Sec. 43.80.015. **TAXATION UNDER P.L. 92-203.** (a) The receipt of the original issue of shares of stock in a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) by or on behalf of a Native (as defined in the federal Act) is not subject to any form of state or local taxation.



(b) The receipt of land or an interest in it under the federal Act or of cash in order to equalize the values of property exchanged under sec. 22(f) of that Act or AS 38.15.060 is not subject to any form of state or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of this land or interest in land for purposes of a state or local tax imposed on or measured by income is the fair value of the land or interest in land at the time of receipt.

(c) A real property interest conveyed under the federal Act or AS 38.15.050 or 38.15.060, including land received in an exchange under sec. 22(f) of the federal Act or AS 38.15.060, to a Native individual or corporation incorporated under Alaska law pursuant to the federal Act, which interest is not developed or leased to third parties, is exempt from state and local real property taxes and local assessments until December 18, 1991. However, municipal taxes, local real property taxes, or local assessments may, under the laws of the state, be imposed upon leased or developed real property within the jurisdiction of any governmental unit organized under the laws of the state. Easements, rights-of-way leaseholds, and similar interests in real property may be taxed in accordance with state or local law. All rents, royalties, profits, and other revenues or proceeds derived from property interests are taxable to the same extent as these revenues or proceeds are taxable when received by a non-Native individual or corporation. In sec. 21(d) of the federal Act, the exemption of real property interests from local real property taxes includes exemption from local assessments and extends to land received in an exchange under sec. 22(f) of the federal Act or AS 38.15.060.

(d) Use of the terms "corporate funds" and "dividends", in sec. 7(j) and (m) of the federal Act, does not determine whether the money is a dividend, dis-

tribution to shareholders, funds which are property, surplus or capital of a regional corporation for the purposes of this title or AS 10.05 or other applicable state law, the provisions of sec. 8 of this Act notwithstanding.

• Sec. 6. AS 45.55 is amended by adding a new section to read:

Sec. 45.55.138. APPLICATION TO ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS. The initial issue of stock of a corporation organized under Alaska law pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) is not a sale of a security under secs. 70 and 130(10) of this chapter.

• Sec. 7. AS 45.60 is amended by adding a new section to read:

Sec. 45.60.016. P.L. 92-203 CORPORATIONS; CUSTODIANS. (a) Stock or membership in a corporation organized under Alaska law pursuant to the Alaska Native Claims Settlement Act which a minor is entitled under the settlement Act to receive shall be issued by the corporation to a custodian.

(b) The custodian shall be determined in accordance with the order of priority set out below, and the appointment becomes effective upon the corporation's receipt of the custodian's written consent to the appointment:

- (1) the legal guardian, if any, of the minor;
- (2) a parent, if any, of the minor, as selected by his parents;
- (3) an adult member of the minor's family, as defined in sec. 91(12) of this chapter; it may also include members of the family with whom the minor has customarily lived.

(c) For good cause, a district court or the superior court may vary the order of priority set out in (b) of this section or appoint another suitable person as custodian, and, for good cause, the superior court may establish a guardianship under AS 20.05 for a minor.

(d) The custodianship is governed by this chapter, as modified by the following:

(1) in sec. 31(d), "deliver or pay over to the estate of the minor" includes delivery to the heirs by intestate succession or custodians for the heirs, under this chapter;

(2) under sec. 51, a third person is responsible for determining whether stock is inalienable under the settlement Act;

(3) the custodian shall give an appropriate receipt for the stock or other property received for the minor, which may include real or personal property, gifts to a minor, and alienable stock vested in the minor;

(4) the custodian may not alienate inalienable property except within the limits provided by law;

(5) the form of registration or title shall be "as custodian for [name of minor] under the Alaska Native Claims Settlement";

(6) a custodian may not receive compensation except, upon application to and approval by the superior court, for unusual and extraordinary services;

(7) "custodial property" includes securities, money and other real and personal property under supervision as a consequence of the settlement Act.

(e) In this section, "settlement Act" means the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688), including amendments to it.

• Sec. 8. To the extent of an inconsistency between a provision of this Act or AS 10.05 or 10.20 and a provision of the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) or a provision in the articles of incorporation or bylaws required by the U.S. Secretary of the Interior under sec. 7(e) of the federal Act, the federal Act or the required provision in the articles or bylaws prevails with regard to a corporation organized under Alaska law pursuant to the federal Act. To the extent of an inconsistency between a provision of this Act and a provision of AS 10.05 or 10.20, this Act prevails with regard to a corporation organized under Alaska law pursuant to the federal Act. To the extent of an inconsistency between a provision of this Act and a provision of AS 10.05 or 10.20, this Act prevails with regard to a corporation organized under Alaska law pursuant to the federal Act.

• Sec. 9. AS 38.30 is repealed.

• Sec. 10. If an Act is passed by the Seventh Alaska Legislature repealing the provisions of AS 13.20, AS 13.30.115, enacted in sec. 2 of this Act, is unaffected unless specifically referred to in the repealer, and the revisor of statutes shall make an appropriate relocation of the section.

• Sec. 11. AS 13.30.115, enacted in sec. 2 of this Act, is retroactive to December 18, 1971.

• Sec. 12. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Approved by governor: May 18, 1972

Actual effective date:

Sec. 2: December 18, 1971; all other secs.: May 19, 1972